4053.

SUPREME COURT OF THE UNITED STATES.

No. 202.

THE SUN MUTUAL INSURANCE COMPANY, PL'FFS IN ER.,

vs.

JOHN S. WRIGHT, USE OF MAXWELL, WRIGHT & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight—

Present, the honorable William F. Giles, judge of the Maryland district; William M. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other, were the following proceedings, to wit:

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

Be it remembered, that heretofore, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and fifty-seven, William George Brown and Frederick W. Brune, esquires, attorneys for the defendant, filed in the circuit here the transcript of a record from the superior court of Baltimore city, in the words and of the tenor following, to wit:

Record.

STATE OF MARYLAND,
City of Baltimore, to wit:

At a session of the superior court of Baltimore city, in the fifth judicial circuit of the State of Maryland, begun and held at the court-house, in the said city, on the second Monday in January, being the twelfth day of the same month, in the year of our Lord one thousand eight hundred and fifty-seven—

Present, the honorable Z. Collins Lee, judge; Samuel S. Gaskins, esquire, sheriff; Edward Dowling, clerk.

Among other, were the following proceedings, to wit:

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

Be it remembered, that heretofore, to wit, on the fifteenth day of April, in the year of our Lord eighteen hundred and fifty-seven, William H. Bayzand, esquire, one of the justices of the peace

of the State of Maryland in and for the city of Baltimore, pursuant to an act of Assembly in such case made and provided, sent to the clerk of the superior court of Baltimore city, here, a certain affidavit made before him, with an account thereto annexed, together with the warrant of him, the said William H. Bayzand, under his hand and seal; which said affidavit, account, and warrant, are in the words and of the tenor following, to wit:

Affidavit.

STATE OF MARYLAND,
Baltimore City, to wit:

Be it remembered, that on the fifteenth day of April, in the year one thousand eight hundred and fifty-seven, before me, the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore aforesaid, personally appeared John S. Wright, an inhabitant of the United States, and made oath, according to law, that the Sun Mutual Insurance Company is justly and bona fide indebted unto him, the said John S. Wright, in the full and just sum of sixteen thousand four hundred and seventy dollars, with interest thereon from the 13th day of December, 1856, over and above all discounts. And at the same time the said John S. Wright produced to me the account on and by which the said Sun Mutual Insurance Company is so indebted, which is hereto annexed. And the said John S. Wright did also make oath that he is credibly informed, and verily believes, that the said Sun Mutual Insurance Company is not a citizen of the State of Maryland, and doth not reside therein, but the said company is a corporation incorporated by an act of the Legislature of New York.

WM. H. BAYZAND, *J. P.*

Baltimore, 15th April, 1857.

Account.

The Sun Mutual Insurance Company to John S. Wright.

To loss on insurance from Rio de Janeiro to New Orleans on the one-half of 1830 bags coffee, per schooner Mary W., valued at $18 per bag, as per policy No. 31,054, $32,940, their one-half being.....	$16,470
Interest from 13th December, 1856.....	

Warrant.

To the clerk of the superior court of Baltimore city, Mr. Dowling:

You are hereby required, on receipt of this warrant, and the above annexed voucher on which the same is granted, to issue an attachment against the lands and tenements, goods, chattels, and credits

of the said Sun Mutual Insurance Company, to answer unto the said John S. Wright the above-mentioned sum of sixteen thousand four hundred and seventy dollars, with interst thereon from the 13th day of December, 1856, current money, and costs of the attachment, according to the acts of Assembly in such case made and provided, and this warrant shall be your sufficient authority therefor.

Given under my hand and seal this fifteenth day of April, in the year eighteen hundred and fifty-seven.

WM. H. BAYZAND, [SEAL.]
Justice of the Peace in and for the City of Baltimore, and State of Maryland.

And thereupon, in pursuance of the said warrant, and of the act of Assembly aforesaid, the said John S. Wright, by Robert J. Brent and Henry May, esquires, his attorneys, prosecuted and sued forth out of the superior court of Baltimore city, here, the writ of the State of Maryland, of attachment in form following, to wit:

Attachment.

THE STATE OF MARYLAND.

To the sheriff of Baltimore city, greeting:

Whereas, William H. Bayzand, esquire, one of the justices of the peace for Baltimore city, hath this day issued his war-
[SEAL.] rant to the clerk of the superior court of said city, directing him to issue attachment against the lands and tenements, goods, chattels, and credits of the Sun Mutual Insurance Company, to answer unto John S. Wright the sum of sixteen thousand four hundred and seventy dollars, with interest from the 13th day of December, 1856. We therefore command you, therefore, that you attach the lands, tenements, goods, chattels, and credits of the said Sun Mutual Insurance Company, to the value of sixteen thousand four hundred and seventy dollars, with interest as aforesaid, current money, and costs of this attachment, according to the form of the act of Assembly in such case made and provided. And we further command you, that by good and lawful men of your bailiwick, you make known unto the person or persons in whose hands you shall make this attachment, that he, she, or they be and appear before the judge of the superior court of Baltimore city, at the court-house, in the same city, on the second Monday of May next, to show cause (if any he, she, or they have) why the lands, tenements, goods, chattels, and credits by you attached, by virtue of this writ, in his, her, or their hands, shall not be condemned, and execution thereof had and made to and for the use of the said John S. Wright, as of the lands, tenements, goods, and chattels, and credits of the aforesaid

Sun Mutual Insurance Company, according to the act of Assembly in such case made and provided, if to him, her, or them it shall seem meet, and how you shall execute this writ, make known to our said judge at the day and place aforesaid, and have you then and there this writ.

Witness, the honorable Z. Collins Lee, judge of our said court, the 12th day of January, 1857.

EDW'D DOWLING,
Clerk.

Issued 15th day of April, 1857.

And the said John S. Wright, by his attorneys aforesaid, at the time of suing forth the aforegoing writ of attachment, prosecuted and sued forth out of the said court the writ of summons of the State of Maryland, in form following, to wit:

Summons.

STATE OF MARYLAND,
Baltimore City, to wit:

[SEAL.] To the sheriff of Baltimore city, greeting:

You are hereby commanded to summon Sun Mutual Insurance Company, of Baltimore city, to appear before the superior court of Baltimore city, to answer an action at the suit of John S. Wright, and have you then and there this writ.

Witness, the honorable Z. Collins Lee, judge of the said court, the 12th day of January, 1857.

EDW'D DOWLING, *Clerk.*

Issued 15th day of April, 1757.

And thereupon the said John S. Wright, by his attorneys aforesaid, filed in court here, in said cause, the following short note, to wit:

Short Note.

Action on the case in the superior court of Baltimore city.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

This suit is instituted to recover the sum of sixteen thousand four hundred and seventy dollars, with legal interest thereon from the 13th December, 1856, due and owing from the defendant to the plaintiff, for one-half of the loss sustained by the plaintiff on 1830

bags insured by the defendant against loss, according to the terms of a policy of insurance made by the defendant with the plaintiff.

R. J. BRENT,
H. MAY,
For Plaintiff.

A copy of which short note was made and sent, with the writs aforesaid, to the sheriff of the city aforesaid, thereon endorsed: "To be set up at the court-house door."

Afterwards, to wit, on the twenty-seventh day of April, in the year aforesaid, the Sun Mutual Insurance Company, the defendant aforesaid, appears in court here, by George W. Brown and Frederick W. Brune, jr., esquires, their attorney, and pray the court here that they may be admitted to appear to the original action, according to the act of Assembly aforesaid, which is by the court here granted upon their filing in said cause the following bond to dissolve the said attachment, to wit:

Bond.

Know all men by these presents, that we, Columbus O'Donnell and Charles Oliver O'Donnell, of the city of Baltimore, and State of Maryland, are held and firmly bound unto John S. Wright, of said city, in the full and just sum of thirty-four thousand dollars, to be paid to the said John S. Wright, his attorney or assigns, to the payment of which we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-seventh day of April, 1857.

Whereas, the said John S. Wright, heretofore, to wit, on the fifteenth day of April, 1857, sued out of the superior court of Baltimore city a writ of attachment on warrant against the Sun Mutual Insurance Company, to recover the sum of sixteen thousand four hundred and seventy dollars, with interest from 13th of December, 1856, which attachment the said Sun Mutual Insurance Company wishes to have dissolved:

Now, the condition of the above obligation is such, that if the said Sun Mutual Insurance Company do and shall pay and satisfy any judgment that shall be recovered in said case against the said company, then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

COLUMBUS O'DONNELL, [SEAL.]
C. OLIVER O'DONNELL, [SEAL.]

Signed, sealed, and delivered in the presence of—
F. A. PREVOST.

On the back whereof are the following endorsements, to wit:

I believe the within bond sufficient.

E. DOWLING, *Clerk.*

Bond approved April 27th, 1857.

Z. COLLINS LEE.

And thereupon the said attachment is by the court here dissolved, and the said defendant, by George W. Brown and Frederick W. Brune, jr., esquires, their attorneys, appear to the original action aforesaid, and file in said court the following order, to wit:

Order.

IN THE SUPERIOR COURT OF BALTIMORE CITY.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY. } Originals to May term, 1857.

Brown & Brune, attorneys for the Sun Mutual Insurance Company, appear for them.

BROWN & BRUNE.
Baltimore, April 27, 1857.

And on the same day, the twenty-seventh day of April, to wit, at the time of entering the appearance of the said defendants to the original action as aforesaid, the said defendants, by their attorneys aforesaid, filed in said cause the following petition, affidavit, and bond for the removal of said cause, to wit:

Petition.

IN THE SUPERIOR COURT OF BALTIMORE CITY.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY. }

To the honorable Z. Collins Lee, judge of said court:

The petition of the above defendant respectfully shows, that a suit has been commenced in your honorable court by John S. Wright, a citizen and inhabitant of the State of Maryland; that your petitioner, against whom said suit is brought, is a corporation engaged in marine insurance, duly created under an act of the Legislature of New York, and doing business in and a citizen of the State of New York, where its principal office for transacting business is situated.

That said suit is brought for a claim under a policy of insurance issued to said plaintiff by the defendant, and that said claim and the matter in dispute between them exceeds the sum of five hundred dollars, exclusive of costs, and amounts to the sum of $16,470, as stated and set forth in the writ of attachment issued in said suit.

That proceedings have been had in said suit, whereby the plaintiff has attached the goods, chattels, and credits of your petitioner in the hands of various citizens and inhabitants of the State of Maryland to a very large amount. Your petitioner is desirous to remove the cause for trial into the next circuit court of the United States to be held in and for the district of Maryland, in the fourth circuit, under the provisions of the 12th section of the act of Congress of the United States, entitled "An act to establish the judicial courts of the United States;" and is ready and willing and hereby offers good and sufficient surety for its entering in such court, on the first day of its session, copies of the said process against them, and also for their appearance there, and entering special bail in the cause, if special bail were originally requisite therein, and for doing all other acts and things on its part required to be done by it under the act last above referred to; and for the purpose of said removal and appearance, and to dissolve the attachment issued as aforesaid, the defendant herewith files and offers a bond in the sum of thirty-four thousand dollars, with surety, to satisfy any judgment which shall be recovered in this case against it, the said defendant.

Your petitioner further shows that no steps or proceedings have been taken by it in said cause, but that, at the time of filing its petition, the defendant has caused its appearance to be entered in this court, under the provisions of said act of Congress, for the purpose of effecting such removal of said cause. Your petitioner therefore prays that said cause may be removed for trial from this honorable court into the next circuit court of the United States to be held in the city of Baltimore, in and for the district of Maryland, in the fourth circuit, according to the act of Congress in such case made and provided.

BROWN & BRUNE,
For Petitioner.

Affidavit.

SUPERIOR COURT OF BALTIMORE CITY,
State of Maryland, Baltimore City, ss:

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

Personally appeared in open court, this 27th day of April, 1857, Alexander Hamilton, jr., and made oath that the defendants in the above case are a corporation duly created under an act of the

Legislature of the State of New York, and a citizen of the said State of New York.

Sworn to before Z. COLLINS LEE,
Judge of the Superior Court of Balt'e, Md.

Bond.

Know all men by these presents, that we, Columbus O'Donnell and Charles Oliver O'Donnell, of the city of Baltimore, are held and firmly bound unto John S. Wright, of said city, in the sum of thirty-four thousand dollars to be paid unto the said Wright, his executors, administrators, and assigns, to which payment we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals this 27th day of April, eighteen hundred and fifty-seven.

Whereas the said Wright hath sued out a writ of attachment from the superior court of Baltimore city against the Sun Mutual Insurance Company, which is a corporation duly created under *under* an act of the State of New York, and which, having dissolved the said attachment by filing bond under the laws of the State of Maryland, have, at the same time of entering their appearance, filed their petition to remove the said proceedings for trial to the circuit court of the United States for the Maryland district, under the act of Congress in such case made and provided:

Now, the condition of the above obligation is such, that if the said Sun Mutual Insurance Company shall enter, in the said circuit court for the said district, on the first day of its session, at the November term, eighteen hundred and fifty-seven, copies of said process against them, and shall then and there appear to the same, then the said obligation shall be void, otherwise to be and remain in full force and effect.

COLUMBUS O'DONNELL, [SEAL.]
CHARLES OLIVER O'DONNELL, [SEAL.]

Signed, sealed, and delivered in
the presence of—
F. A. PREVOST.

Whereupon the court here made the following endorsement on the said aforegoing bond for the removal of the cause as aforesaid, to wit:

"Bond approved April 27, 1857. Z. Collins Lee."

And thereupon passed the following order, to wit:

Order.

JOHN S. WRIGHT
v.
THE SUN MUTUAL INSURANCE COMPANY.

The defendant in this case having appeared and filed its petition

to remove the cause to the circuit court of the United States, and the bond filed by it, with surety, being approved, the court will proceed no further in the cause.

Z. COLLINS LEE,
April 27, 1857.

And thereupon the sheriff of the city aforesaid, to whom the writ first aforesaid was in form aforesaid directed, makes return thereof to court here thus endorsed, to wit:

Laid in the hands of the Union Bank of Maryland, by service on Robert Mickle, cashier of said bank, on the 15th day of April, 1857, at 25 minutes past 10 o'clock, in the presence of John J. Daneker and Columbus W. Windsor.

Also, laid in the hands of the Merchants' Bank of Baltimore, by service on Daniel Sprigg, cashier of said bank, on the 15th day of April, 1857, at 2 o'clock p. m., in the presence of John J. Daneker and Columbus W. Windsor.

Also, in the hands of Charles Oliver O'Donnell, as agent of the Sun Mutual Insurance Company of the city of Baltimore, on the 16th day of April, 1857, at ¼ past 9 o'clock a. m., in the presence of John J. Daneker and George W. Peacock.

Also, laid in the hands of Thomas W. Levering, Samuel S. Levering, and Peter R. Levering, co-partners, trading under the name and style of Thomas W. Levering & Sons, by service on Samuel S. Levering, on the 16th day of April, 1857, at ¼ past 2 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas Peirce, on the 16th day of April, 1857, at 20 minutes past 2 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas R. Mathews, senior, and Thomas R. Mathews, junior, co-partners, trading under the name and style of Thomas R. Mathews and Son, by service on Thomas R. Mathews, senior, on the 16th day of April, 1857, at ½ past 2 o'clock p. m., in the presence of George W. Peacock and Thomas Griffin.

Also, laid in the hands of Samuel Hurlbut, on the 16th day of April, 1857, at half-past 2 o'clock p. m., in the presence of George W. Peacock and Thomas Griffin.

Also, laid in the hands of Thomas Whitridge and Horatio Whitridge, co-partners, trading under the name and style of Thomas Whitridge & Co., on the 16th day of April, 1857, at a ¼ before 3 o'clock p. m., in the presence of George W. Peacock and Thomas Griffin.

Also, laid in the hands of Jerrard Parkhurst, junior, George T. Parkhurst, and John W. S. Brady, co-partners, trading under the name and style of J. Parkhurst, junior, & Co., by service on George

T. Parkhurst, on the 16th day of April, 1857, at 10 minutes before 3 o'clock p. m., in the presence of George W. Peacock and Thomas Griffin.

Also, laid in the hands of George W. Wait and William C. Wait, co-partners, trading under the name and style of George W. Wait & Son, by service on William C. Wait, the 16th day of April, 1857, at 3 o'clock p. m., in the presence of George W. Peacock and Thomas Griffin.

Also, laid in the hands of Thomas Hooper, on the 16th day of April, 1857, at 10 minutes past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Frederick W. Brune, John C. Brune, and William H. Brune, co-partners, trading under the name and style of F. W. Brune & Sons, by service on William H. Brune, on the 16th day of April, 1857, at 20 minutes past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Alexander Kirkland, Daniel Chase, Allen A. Chapman, and Robert R. Kirkland, co-partners, trading under the name and style of Kirkland, Chase and Company, by service on Allen A. Chapman, on the 16th day of April, 1857, at 25 minutes past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Charles Pendergast, on the 16th day of April, 1857, at ½ past 3 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Lambert Gittings, on the 16th day of April, 1857, at 20 minutes before 4 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of James Corner, Baptist M. Corner, and George W. Corner, co-partners, trading under the name and style of James Corner & Sons, by service on George W. Corner, on the 16th day of April, 1857, at 10 minutes before 4 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Thomas J. Hand, Joseph Myrick, and William H. Browne, co-partners, trading under the name and style of Thomas J. Hand & Company, by service on Thomas J. Hand, on the 16th day of April, 1857, at 4 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Joseph Crosby and John Bevan, co-partners, trading under the name and style of Joseph Crosby & Son, by service on Joseph Crosby, on the 17th day of April, 1857, at 10 minutes before 1 o'clock p. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Joseph O. Foard and Charles H. Rogers, co-partners, trading under the name and style of Foard & Rogers, by service on Charles H. Rogers, on the 17th day of April, 1857, at 10 minutes before 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Samuel Philips, trading under the name and style of Samuel Philips & Company, on the 17th day of April, 1857, at 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Simon Parkhurst, on the 17th day of April, 1857, at 10 o'clock a. m., in the presence of Columbus W. Windsor and George Peacock.

Also, laid in the hands of Alpheus Hyatt and Alexander H. Stump, co-partners, trading under the name and style of Hyatt & Stump, by service on Alpheus Hyatt, on the 17th day of April, 1857, at 5 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William H. Crawford, Francis Sanders, and Columbus Crook, co-partners, trading under the name and style of William H. Crawford & Company, by service on William H. Crawford and Columbus Crook, on the 17th day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Charles F. Pitt, on the 17th day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Samuel Fenby and Richard D. Fenby, co-partners, trading under the name and style of S. Fenby & Brother, by service on Samuel Fenby, on the 17th day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Benjamin A. Franklin and George Solomon, co-partners, trading under the name and style of B. A. Franklin & Co., by service on Benjamin A. Franklin, on the 17th day of April, 1857, at half-past 10 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William W. Spence and Andrew Reid, co-partners, trading under the name and style of Spence & Reid, by service on William W. Spence, on the 17th day of April, 1857, at 15 minutes before 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of James F. Pendergast, on the 17th day of April, 1857, at 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, in the hands of Charles M. Jackson, on the 17th day of April, 1857, at 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, in the hands of William Sterling and Adolph Ahrens, co-partners, trading under the name and style of Sterling and Ahrens, by service on William Sterling, on the 17th day of April, 1857, at 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of William Applegarth, on the 17th day

of April, 1857, at ½ past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, in the hands of William P. Lemmon and Robert Lemmon, co-partners, trading under the name and style of William P. Lemmon & Son, by service on William P. Lemmon, on the 17th day of April, 1857, at ½ past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, laid in the hands of Charles R. Pearce, on the 17th day of April, 1857, at ½ past 11 o'clock a. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, in the hands of the Mechanics' Bank, of Baltimore, by service on Charles R. Coleman, cashier of said bank, on the 17th day of April, 1857, at 20 minutes before 2 o'clock p. m., in the presence of John J. Daneker and George W. Peacock.

Also, laid in the hands of the Baltimore Steam Packet Company, by service on Moor N. Falls, president of said company, on the 17th day of April, 1857, at 10 minutes past 4 o'clock p. m., in the presence of Columbus W. Windsor and George W. Peacock.

Also, in the hands of Charles D. De Ford and William Y. De Ford, co-partners, trading under the name and style of Charles D. De Ford & Company, by service on Charles D. De Ford, on the 20th day of April, 1857, at ½ past 9 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of William H. Perote, on the 20th day of April, 1857, at 35 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of John E. Hooper, doing business under the name and style of James Hooper & Company, on the 20th day of April, 1857, at 15 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of James J. Fisher, Richard D. Fisher, and Robert A. Fisher, co-partners, trading under the name and style of James J. Fisher & Sons, on the 20th day of April, 1857, at 10 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of Otho H. Williams, trading under the name and style of Williams, Howell & Sons, on the 20th day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Lemuel R. Woolen.

Also, laid in the hands of Robert Leslie, trading under the name and style of Robert Leslie & Sons, on the 20th day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Thomas Wilson, Robert W. Allen, and William S. Peterkin, co-partners, trading under the name and style of Robert Wilson & Co., by service on Robert W. Allen, on the 20th day of April, 1857, at 10 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of William T. Hall and Thomas D. Loney, co-partners, trading under the name and style of Hall & Loney, by service on William T. Hall, on the 20th day of April, 1857, at 15 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry Whittington and Ichabod B. Eastman, co-partners, trading under the name and style of Whittington & Eastman, on the 20th day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of John Williams, John A. Hoogewerff, and George W. Bee, co-partners, trading under the name and style of John Williams & Son, on the 20th day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Nathan Rogers and Charles Butler, co-partners, trading under the name and style of Nathan Rogers & Co., by service on Charles Butler, on the 20th day of April, 1857, at ½ past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of the Cromwell Steamship Company, by service on Amasa C. Hall, agent of said company, on the 20th day of April, 1857, at 20 minutes before 11 o'clock a. m., in the presence of George Peacock and Leonard R. Woolen.

Also, laid in the hands of James Givin, on the 20th day of April, 1857, at 10 minutes before 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Robert C. Wright, on the 20th day of April, 1857, at 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry R. Wilson, David S. Wilson, Thomas J. Wilson, and James G. Wilson, co-partners, trading under the name and style of *of* William Wilson and Sons, by service on Henry G. Wilson, on the 20th day of April, 1857, at 10 minutes past 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Ambrose A. White and Francis W. Elder, co-partners, trading under the name and style of White & Elder, on the 21st day of April, 1857, at 15 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of James A. Hooper, on the 21st day of April, 1857, at 25 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of the Merchants' and Miners' Line of Steamships, by service on Henry D. Mears, agent of said company, on the 21st day of April, 1857, at 30 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

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Also, in the hands of the Mechanics' Bank, of Baltimore, by service on Charles R. Coleman, cashier of said bank, on the 17th day of April, 1857, at 20 minutes before 2 o'clock p. m., in the presence of John J. Daneker and George W. Peacock.

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Also, laid in the hands of Robert Leslie, trading under the name and style of Robert Leslie & Sons, on the 20th day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Thomas Wilson, Robert W. Allen, and William S. Peterkin, co-partners, trading under the name and style of Robert Wilson & Co., by service on Robert W. Allen, on the 20th day of April, 1857, at 10 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

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Also, laid in the hands of James Givin, on the 20th day of April, 1857, at 10 minutes before 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

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Also, laid in the hands of James A. Hooper, on the 21st day of April, 1857, at 25 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of the Merchants' and Miners' Line of Steamships, by service on Henry D. Mears, agent of said company, on the 21st day of April, 1857, at 30 minutes past 9 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of John P. Hooper and James Hooper, junior, co-partners, trading under the name and style of James Hooper & Sons, on the 21st day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Samuel G. Hands and Isaac T. Tuttle, co-partners, trading under the name and style of Samuel G. Hands & Co., by service on Samuel G. Hands, on the 21st day of April, 1857, at 20 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of John Egerton, Charles M. Dougherty, Hiram Woods, jr., and John L. Weeks, co-partners, trading under the name and style of Egerton, Dougherty, Woods & Co., on the 21st day of April, 1857, at 15 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Frederick A. Levering and Eugene Levering, co-partners, trading under the name and style of Levering & Co., by service on Eugene Levering, an the 21st day of April, 1857, at 5 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of James Birkhead and Hugh Birkhead, co-partners, trading under the name and style of Birkhead & Brothers, by service on James Birkhead, on the 21st day of April, 1857, at 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Hugh Jenkins, Hugh Jenkins, junior, and John Stricker Jenkins, co-partners, trading under the name and style of Hugh Jenkins & Co., by service on Hugh Jenkins and Hugh Jenkins, junior, on the 21st day of April, 1857, at 5 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry Oelrick and Gustav. W. Lurman, co.partners, trading under the name and style of Oelricks & Lurman, on the 21st day of April, 1857, at 20 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of William D. Miller, William E. Mayhew, junior, William Hawkins, and Thomas Goodwin, co-partners, trading under the name and style of William Mayhew & Co., by service on William E. Mayhew, junior, on the 21st day of April, 1857, at 25 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Henry Tiffany, Henry J. Rice and Benjamin M. Makepeace, co-partners, trading under the name and style of Tiffany, Ward & Co., by service on Benjamin M. Makepeace, on the 21st day of April, 1857, at 30 minutes past 10 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

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Also, laid in the hands of Samuel G. Wyman, John H. Wyman, George H. Byrd, Thomas M. Tolman, and *and* James H. Martin, co-partners, trading under the name and style of Wyman, Byrd & Co., by service on George H. Byrd, on the 21st day of April, 1857, at 25 minutes before 11 o'clock a. m., in the presence of George W. Peacock and Leonard R. Woolen.

Also, laid in the hands of Jacob W. Hugg, on the 23d day of April, 1857, at 15 minutes before 9 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Robert Weir and William Longcope, and *and* James G. Ramsay, co-partners, trading under the name and style of Weir, Longcope & Co., by service on William Longcope, on the 23d day of April, 1857, at 11 minutes before 10 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Robert Tucker and Henry R. Tucker, co-partners, trading under the name and style of R. & H. R. Tucker, by service on Henry R. Tucker, on the 23d day of April, 1857, at 15 minutes before 5 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of the Merchants' and Miners' Transportation Company, by service on Thomas C. Jenkins, president of said company, on the 23d day of April, 1857, at 10 minutes past 5 o'clock p. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of James Cheston and Galloway Cheston, co-partners, trading under the name and style of James Cheston & Son, by service on Galloway Cheston, on the 24 day of April, 1857, at 25 minutes past 11 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of John Henderson and Gustavus Henderson, co-partners, trading under the name and style of Johnson & Co., by service on Gustavus Henderson, on the 24th day of April, 1857, at ½ past 11 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Also, laid in the hands of Joseph C. Yates, on the 25th day of April, 1857, at ½ past 9 o'clock a. m., in the presence of George W. Peacock and Thomas W. Griffin.

Attachment dissolved by bond, as per clerk's certificate.

SAMUEL S. GASKINS,
Sheriff of Balto. City.

And the sheriff aforesaid to whom the writ of summon was in form aforesaid directed, and to whom the copy of the said short note was in manner aforesaid sent, makes return to the court here of the last-mentioned writ, thus endorsed: Non sunt, copy set up.

SAMUEL S. GASKINS, *Sh'ff.*

Whereupon the above cause, and all the proceedings therein, in pursuance of the order aforesaid, are hereby removed into the said circuit court of the United States, as prayed.

Test: EDW'D DOWLING, *Clerk.*

In testimony that the aforegoing is a full and true transcript taken from the record of the proceedings of the superior court of Baltimore city in the cause above mentioned, I hereunto set my hand and affix the seal of the said court, this thirty-first [SEAL.] day of August, in the year of our Lord eighteen hundred and fifty-seven.

EDWARD DOWLING,
Clerk of Superior Court of Baltimore City.

Plt'ffs costs.....$63 34⅔.
Defend'ts costs.... 14 33⅓.

And now here, at this term, to wit, the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-seven, come into the circuit court here the said John S. Wright, by Robert J. Brent and Henry May, his attorneys, and the said Sun Mutual Insurance Company, by George W. Brown and Frederick W. Brune, its attorneys.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Monday in April next.

Afterwards, to wit, on the second day of December, in the year of our Lord one thousand eight hundred and fifty-seven, the plaintiff, by his attorneys aforesaid, filed in the circuit court here, an order in the words and of the tenor following, to wit:

Order to enter to the use of Maxwell, Wright & Co.

U. S. CIRCUIT COURT,
For the District of Maryland.

JOHN S. WRIGHT
v.
THE SUN MUTUAL INSURANCE COMPANY.

MR. SPICER: Please enter the above suit to the use of Maxwell, Wright & Co.

JOHN S. WRIGHT, [SEAL.]

Dec'r 2d, 1857.

Witnessed by—
ROBERT J. BRENT.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight, come again into the circuit court here the parties aforesaid, by their attorneys aforesaid.

And the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here an agreement in the words of the tenor following, to wit:

Agreement.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

It is agreed in the above case that the short note filed among the proceedings shall be taken as a nar., filed since the dissolution of the attachment, that the plea of non assumpsit shall be taken as if filed to said nar., with leave to each party to give the special matter in evidence, the same as if duly pleaded, and that all errors in pleading are mutually released.

R. J. BRENT,
For Plt'ff.
BROWN & BRUNE,
For Defend't.

And the defendant, by its attorneys aforesaid, filed in the circuit court here an admission, in the words and of the tenor following to wit:

Defendants' admission.

IN CIRCUIT COURT U. S.,
M'd District.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

It is admitted that the defendants are duly incorporated, corporation for the transaction of business in insurance in the State of New York.

BROWN & BRUNE,
For Dfend'ts.

And the plaintiff, by his attorneys aforesaid, filed in the circuit court here, a notice to the defendant, in the words and of the tenor following, to wit:

Notice to Defendant.

IN THE CIRCUIT COURT FOR THE DISTRICT OF MARYLAND.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

To the above-named defendant:

Take notice, that at the trial of the above cause, which is fixed for trial on Thursday, the fifteenth instant, you will be required to produce all letters to you from the plaintiff, John S. Wright, and also all letters written by you to C. Oliver O'Donnell, or other person acting as agent for you in Baltimore, touching or concerning the making and effecting of the policy of insurance now in suit, or touching or concerning the plaintiff's loss, as claimed by him in this suit.

ROB. J. BRENT,
For Pltff.

Balt'e, 12 April, 1858.
Service of copy admitted.

BROWN & BRUNE,
For Defend't.

April 12, 1858.

And the defendant, by its attorneys aforesaid, filed in the circuit court here its objections to the reading of the deposition of Consider Thomas, in the words and of the tenor following, to wit:

Objections to Evidence.

IN THE CIRCUIT COURT OF THE UNITED STATES,
Maryland District.

JOHN S. WRIGHT
vs.
THE SUN MUTUAL INSURANCE COMPANY.

To the Hon. William F. Giles, judge of said court:

The said defendant says, that it had no actual notice that the deposition of Consider Thomas had been taken in this case until a short time before the April term of this honorable court, and had thus no opportunity to cross-examine said witness, which it desires to do.

The defendant therefore objects to the reading of said deposition for the following reasons:

1. Because the certificate of William Rice, styling himself the Mayor of Bath, is not verified by the corporate seal of said city, nor does it otherwise sufficiently appear that said Rice was the mayor of said city.

2. If said Rice is to be regarded as said mayor, the defendant

further contends that it is apparent, from said depositions and certificate, that the whole of the same are in the handwriting of the plaintiff's counsel, except the answers to the interrogatories, and the signatures of the witness and the magistrate, and that this is contrary to the act of Congress.

3. Because it appears that said deposition was, in response to special interrogatories, prepared by the plaintiff's counsel, and it does not appear that the witness was carefully examined to tell the whole truth, as required by the act of Congress.

4. Because it is manifest, from the handwriting of the envelope and the seal, (F. D. S.,) that the said deposition was sealed up and directed by the plaintiffs, and therefore was not retained by the magistrate and sealed up and delivered by him to the court, so as to remain under his seal until opened in court, as required by said act.

5. Because the deposition is not entitled as made in this cause.

6. Because it does not appear, from the deposition or the certificate, that the witness made said deposition in reference to any cause, much less that he made it in this cause, or to be used in the same; and although from the certificate it appears that the magistrate, at the time he signed the same, knew that the deposition was to be used in this cause, yet it does not anywhere appear that *the* informed the witness, or that the witness knew, before or at the time of his deposition, or subsequently, for what purpose or for what cause his deposition was taken.

7. For other reasons patent upon said deposition and certificate.

Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twenty persons from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid, be drawn by ballot, and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons being called, come, to wit:

Jury.

Anthony Miltenberger, William H. Philps, Joel Blen, Richard M'Gill, Jacob Green, Edwin M. Shipley, Louis Shotts, Peter J. Adams, William McK. Kepler, William G. Cole, Benjamin Lindsey, Aaron Sparks, who being empannelled and sworn to say the truth in the premises, upon their oath, do say:

Verdict.

That the Sun Mutual Insurance Company did assume upon itself in manner and form as the aforesaid John S. Wright within against it hath complained, and they assess the damages of the said John S. Wright sustained by the occasion of the non-performance of the

promises and assumptions aforesaid, to the sum of seventeen thousand three hundred and sixty-five dollars and thirteen cents, current money.

Judgment.

Therefore, it is considered by the court here, that the aforesaid John S. Wright recover against the said Sun Mutual Insurance Company, as well the sum of seventeen thousand three hundred and sixty-five dollars and thirteen cents, ($17,365 13,) current money, his damages aforesaid, by the jurors aforesaid, in form aforesaid assessed, to be sustained by occasion of the non-performance of the promises and assumptions aforesaid, as the sum of $ by the court here, unto the said John S. Wright, on his assent adjudged for his costs and charges by him about his suit in this behalf laid out and expended. And the said Sun Mutual Insurance Company, in mercy, &c.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said Sun Mutual Insurance Company tendered to the court here its bill of exception, which was by the court here signed and sealed, and which is in the words following, to wit:

Bill of exceptions.

IN THE CIRCUIT COURT OF THE UNITED STATES,
Maryland District.

April term, 1858.

JOHN S. WRIGHT, use of Maxwell, Wright & Co.
vs.
THE SUN MUTUAL INSURANCE COMPANY.

At the trial of the above cause, the plaintiff, to support the issue on his part joined, read in evidence to the jury the policy of insurance of the defendant, dated the 27th day of July, A. D. 1855.

Policy of insurance.

Cargo, No. 31,054.

By the Sun Mutual Insurance Company:

John S. Wright, on account of whom it may concern, loss payable to him, do make insurance, and cause to be insured, lost or not lost, at and from Rio de Janeiro, to a port in the United States, on one-half of 5,000 bags coffee, each 200 bags, in running marks and numbers, in order of invoice, subject to separate average,

upon all kinds of lawful goods and merchandise, laden, or to be laden, on board the good vessel or vessels, whereof is master for the present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called:

Beginning the adventure upon the said goods and merchandises from and immediately following the loading thereof, on board the said vessel at as aforesaid, and so shall continue until the said goods and merchandises shall be safely landed at as aforesaid.

And it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch, and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured, are valued at $18 per bag, as interest may appear.

Touching the adventures and perils which the Sun Mutual Insurance Company is contented to bear, and take upon itself in this voyage, they are of the seas, men of war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, suprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the masters and mariners, and all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchandises, or any part thereof. And in case of any loss or misfortune, it shall be lawful and necessary to and for the insured factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute according to the rate and quantity of the sum herein insured, having been paid the consideration for this insurance, by the assured or assigns, at and after the rate of one and one-half per cent.; to return ¼ per cent., if direct to an Atlantic port; to add *and* additional premium, if by vessels, rating lower than A 2, or by foreign vessels, subject to such addition or deduction as shall make the premiums conform to the established rate at the time the return is made to the company.

Property on deck, warranted free from claim for damage by wet, exposure, leakage, or breakage. And in case of loss, such loss to be paid in thirty days after proof of loss and proof of interest in the said , (the amount of the note given for the premium, if unpaid, being first deducted,) but no partial loss, or particular average shall in any case be paid, unless amounting to five per cent.: Provided, always, and it is hereby further agreed, that if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said Sun Insurance Company shall be answerable only for so much as the amount of

such prior assurance may be deficient towards fully covering the premises hereby insured; and the said Sun Mutual Insurance Company shall return the premium upon so much of the sum by them assured as they shall be by such prior assurance exonerated from. And in case of any insurance upon the said premises subsequent in date to this policy, the said Sun Mutual Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. It is also agreed that the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver of acceptance of an abandonment. It is also agreed that the property be warranted by the assured free from any charge, damage, or loss, which may arise in consequence of a sizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

(From the margin of the policy.)

If laden on board a vessel of a belligerent nation, warranted free from loss or expense, arising from capture, seizure, or detention, or the consequences of any attempt thereat; or if by a neutral vessel, warranted not to abandon in case of capture, seizure or detention, until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to the company; also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade, to be at liberty to proceed to an open port, and there end the voyage; any stipulations in this policy to the contrary notwithstanding.

In case of claims for damage on dry goods or hardware exceeding fifteen per cent., the company to have the privilege of settling upon the principle of a salvage loss, paying to the assured the sum insured, with the freight and the duties.

In witness whereof, the president or vice president of the said Sun Mutual Insurance Company hath hereunto subscribed his name and the sum insured, and caused the same to be attested by their secretary, in New York, the seventh day of July, one thousand eight hundred and fifty-five.

Memorandum.

It is agreed that bar, bundle, rod, hoop, and sheet-iron, wire of all kinds, tin plates, steel, madder, sumac, wickerware, and willow, manufactured or otherwise, salt, grain, of all kinds, tobacco, Indian meal, fruits, (whether preserved or otherwise,) cheese, dry fish, vegetables, and roots, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages,

household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting, and cassia, except *except* in boxes, free from average, under twenty per cent., unless general; and sugar, flax, flaxseed, and bread, are warranted by the assured free from average, under seven per cent., unless general; and coffee, in bags or bulk, and rice, free from average, under ten per cent., unless general.

Warranted by the assured free from damage or injury for dampness, change of flavor, or being spotted, discolored, musty, or mouldy, except caused *caused* by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea, damage to dry goods, cutlery, or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise, as far as practicable. The company is not liable for leakage on molasses, or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have been begun, and shall have terminated, before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured is to be retained by the assurers.

$45,000, forty-five thousand dollars.

ALFRED SETON,
V. President.

J. WHITEHEAD,
Secretary.

Premium, $675
Policy, 1

$676

And proved that the defendant was a corporation incorporated by the laws of the State of New York for the purpose of carrying on the business of insurance, and that the said policy was signed by the officers of said company, in the city of New York, and likewise proved that the defendant was a citizen of the State of Maryland, and insured the additional amounts on said policy of $15,000, on the 4th of January, 1856, and $25,000 on the 19th of April, 1856.

The plaintiff further proved that the defendant, through its agent, in the city of Baltimore, Mr. C. Oliver O'Donnell, made the endorsements on said policy, as follows:

August 13, 1855.

Barque Main Law, Rio de Janeiro to New Orleans, on one-half of cargo, coffee, say, on half of 3,000 bags, 1,500, at $18, $27,000, 1½ per ct..... $405

or as interest may appear.

August 15.

Amount declared being 3,500 bags, ½ $31,500, $4,500, 1½..... 67 50

September 27th.

Brig Windward, Rio de Janeiro to Baltimore, on ½ 1,000 bags coffee, valued at $19, $9,500, 1¼..... 118 75

Nov. 20.

Brig Tho's Walter, Rio de Janeiro to Philadelphia, on ½ 500 coffee, val'd at $19 per bag, $4,750, at 1¼..... 59 38

Baltimore, January 4, 1856.

Fifteen thousand dollars additional upon the original terms, $15,000, at 1½ p. c., $225.

C. OLIVER O'DONNELL.

Jan'y 4th, 1856.

Barque Fame, Rio de Janeiro to Baltimore, on ½ 500 bags coffee, valued at $19 per bag, $4,750, 1¼..... 59 38

Baltimore, April 19th, '56.

Twenty-five thousand dollars additional upon original terms, $25,000, at 1½ p. c.

C. OLIVER O'DONNELL.

The plaintiff also proved that said O'Donnell had been since the year 1854 the agent in the city of Baltimore of the defendant, with the powers hereinafter expressed, and that he paid a license as such agent, in accordance with the law of the State of Maryland, of 1846, ch.

That the course of business pursued by him as such agent in the city of Baltimore was and is as follows: He receives at his office in Baltimore applications for insurance by the defendant; the company accepts, rejects, or modifies these applications, which are daily reported to them; if it rejects or modifies them, it communicates with him; if it accepts, the company fills in and forwards to its said agent a policy of insurance, in accordance with the application, and the agent delivers it to the applicant.

When applications are made to enter risks on running policies, he at once makes the entry, and informs the company in New York, which names the premium, and that is communicated to the assured;

and this was the course at the date of the policy and its endorsements.

The premiums specified in the body of the running polices are nominal, and the true premiums to be charged are fixed by increasing or reducing the nominal premium, when the risks are reported.

That the notes for the nominal premiums upon these running policies are received by the witness at the time of each extension of the policy, and forwarded to the company in New York, which collects them from the assured at the time of his last extension of his policy as endorsed thereon; that the notes given by the plaintiff were made payable in Baltimore, and were paid at maturity by the plaintiff to the defendant; when losses are to be paid to persons living in Baltimore, witness receives from the company checks on New York, and hands them to the parties in Baltimore; the premium notes are not given until the policy is delivered, or until the extension is endorsed thereon.

Cross-examination.

On cross-examination, the same witness stated that he had no power whatever to alter any policy transmitted to him for delivery, and that he had never done so in any instance, and that the nominal premiums taken on a running policy are returned, if no risks are reported, with deduction of ½ per cent., which is retained as a bonus; and he also stated that he has no power to bind the company from the time of the application until the answer thereto from the company was received.

Evidence of Charles Morton Stewart, for pltff.

The plaintiff then proved, by Mr. Charles Morton Stewart, that he has been for some time the agent in Baltimore of the Orient Insurance Company of New York, and that in the summer of the year 1856, Mr. O'Donnell was absent on a visit to Europe, and during his absence the witness assisted his friend, Mr. O'Donnell, by advising with his clerk, Mr. Mahool, in regard to the business of the agency; that his so acting was with the knowledge of the company, as appears from its letter of 14th of April, 1856.

Letter from the Pres't of the Sun Mutual Insurance Company of New York to C. Oliver O'Donnell, Baltimore, dated New York, April 14, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, April 14, 1856.

C. OLIVER O'DONNELL, Esq.,
Baltimore.

DEAR SIR: Your communication of the 12th inst. concerning

your contemplated visit to Europe is received. You need not fear any obstacle will be thrown in the way of your arrangements by this company. You are aware, however, that we have been in the habit of relying upon your long experience in the business, and placed greater confidence in your acts than we should otherwise have done. It will be necessary, therefore, that your clerk and friend should be impressed with the idea as strongly as possible, that they must in all cases act under the instructions and approval of the company. Trusting that your proposed trip will not only be one of pleasure, but will tend to the complete restoration of your wife's health,

We are, with much esteem, your obed't servts.,
A. B. NEILSON, *Pres't.*

The policy for T. Whitridge & Co., on specie from California, will be forwarded to-morrow. In this policy we except the risk via Nicaragua, which we are not taking at present. We note insurance for $15,600 on ginseng for Wild Pigeon to Hong Kong and Canton, as advised, for T. Whitredge & Co.

The plaintiff then proved by the said witness and by George W. Mahool, the clerk of the said O'Donnell, that on the 23d day of August, 1856, Mr. O'Donnell—the letter of that date.

Letter from C. O. O'Donnell to the President of the Sun Mutual Insurance Company, dated Baltimore, August 23, 1856.

BALTIMORE, *August* 23, 1856.

A. B. NIELSON, Esq.,
Presdt. Sun Mut. Ins. Co., New York.

DEAR SIR: I have none of your favors to acknowledge. I mentioned that we had on the schooner "Sea Nymph" about $520 under S. Phillips & Co., policy No. 30,786; this was a mistake; we have altogether $2,750 under this policy, and $1,750 under T. R. Mathews & Sons, whose notice of abandonment I enclose to you. I this morning telegraphed you that I drew on you for balance of my acc't, say $946 54, and requested you to protest. Since writing the above, S. Phillips & Co. have handed me the enclosed notice of abandonment. I hand you general average papers of the steamer "F. Raiddor;" the Atlantic Co., with us, were the only underwriters; our portion, $7,500, was placed under Levering & Co.'s policy, No. 24,816, the 20th and 24th June. John S. Wright this morning requested me to enter under his policy, No. 31,054, ½ the cargo of coffee, valued at $18 pr. bag, of the schooner "Mary W." Are we obliged to cover under said policy? He thinks the cargo will be about 3,000 bags; she will come to New Orleans. In yesterday's report, under Sterling & Ahren's policy, I wrote it $9,237 on deck, and 144 under deck,

pr. the "Richard Cobden;" this should have been $9,237 under deck, and $144 on deck. The "R. Cobden" arrived to-day.

Very respectfully, your obdt. serv't,
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

And that on the 25th of August the defendant wrote to Mr. O'Donnell the letter of that date.

Letter from the President of the Sun Mutual Insurance Company to C. Oliver O'Donnell, dated 25 August, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, Aug. 25, 1856.

C. OLIVER O'DONNELL, Esq.,
Baltimore.

DEAR SIR: Under the circumstances as related by you, in yours of the 23d inst., you did perfectly right in declining the proposed risk for Messrs. Malcolm & Co., per sch'r Ocean to Boston.

Your obed. serv't,
A. B. NEILSON, *Pres't.*

Did Messrs. J. R. Mathews & Son ship any grain by the sc. Sea Nymph? Their abandonment only relates to flour. You reported a shipment of grain for that house, on the 8th inst. We are taking the necessary steps to save the property. Please state to Mr. Wright what we have before said to Mr. R. C. Wright, in relation to the vessel. We consider her an entirely unfit vessel for a cargo of coffee, and shall not consider our policy as attaching thereto.

The plaintiff also proved that this letter was communicated by letter of O'Donnell to plaintiff, of 26th of August.

Letter from C. Oliver O'Donnell to J. S. Wright, dated 26th August, 1856.

BALTIMORE, *August* 26, 1856.

J. S. WRIGHT, ESQ:

DEAR SIR: The Sun Mutual Insurance Co., of New York, considers the schooner "Mary W." as an entirely unfit vessel for a cargo of coffee, and shall not consider their policy as attaching thereto.

Very respectfully,
C. OLIVER O'DONNELL.
Per GEO. W. MAHOOL.

Who insisted that he was entitled to be covered by the policy sued on.

The plaintiff then read in evidence the letter of Mr. O'Donnell, of the 26 August.

Letter from C. Oliver O'Donnell to A. B. Neilson, Pres't Sun Mutual Insurance Company, dated 26 August, 1856.

BALTIMORE, *Aug.* 26, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mutual Ins. Co., New York:

DEAR SIR: Your favor of the 25th inst. declining to cover for the sch. "Mary W.," is rec'd. I enclose Wright's answer to my notification, still insisting on being covered for this vessel. He bases his claim chiefly on a certificate, a copy of which I forwarded to you on the 12th inst. If their position is a tenable one, you have the privilege of fixing the rate on said risk. The company that has ½ the risk (the Orient) express their determination to adhere to the rate as named by you. Mr. R. C. Wright who made application to be covered by this same vessel under their last new policy, has no interest in this. In Jan'y last, you granted policy to Messrs. T. Whitridge & Co., for the "Mondamin," from Baltimore to Marseilles, with privilege of Gibralter, and thence to Sicily, and back to Baltimore, they claim ½ p. c. return premium—she not using Sicily, but returned direct. Is this claim correct?

The endorsement on grain under T. R. Mathews & Sons' policy was a mistake. I telegraphed to this effect this morning. The sch. "Ocean," I see, has arrived at Boston.

Very respectfully, your obed't serv't,
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

Enclosure.

DEAR SIR: Your note of this date in which you, the Sun Mutual Insurance Company, of New York, consider the Mary W. as "an entirely unfit vessel for a cargo of coffee," has been received.

The only object in taking out open policies would be defeated, if the underwriters granting them were at liberty to decline any risks which may arise under them, and I shall therefore consider the Sun Mutual Insurance Company, of New York, bound by the spirit as well as the letter of their policy, to cover me for the amount I may have at risk by the sch'r Mary W.

I am, respectfully,
JOHN S. WRIGHT,
Per W. R. JACKSON.

Baltimore, August 26th, 1856.

To C. OLIVER O'DONNELL, ESQ.,
Agent Sun Mutual Ins. Co., of New York, Baltimore.

And likewise the reply of the 27th of August, of the defendant.

Letter of the President of the Sun Mutual Insurance Company to C. Oliver O'Donnell, dated August 27th, 1856.

NEW YORK, *August 27th*, 1856.

C. OLIVER O'DONNELL, ESQ.,
Baltimore:

DEAR SIR: Your favor of the 26th inst. is *is* received. With regard to the case of the sch'r Mary W., under Mr. J. S. Wright's policy, we can only repeat our belief that she is an unfit vessel for such a cargo, which makes her an unseaworthy risk. We will thank you, therefore, to say to Mr. Wright, that if he deems the property covered by the policy, he must so consider it, subject to the risk of the policy not attaching from the unseaworthiness of the vessel.

The return of premium on policy to T. Whitridge & Co., per "Mondamin," for not using Sicily, should be ¼ per cent., not ½ per cent., as advised.

Y'r obed't serv't,
A. B. NEILSON, *Pres't.*

Please send copy of policy, J. Williams & Sons, as we cannot make it agree. No. 30786.

And that on the receipt of this letter which was communicated to the plaintiff, the witness, Mahool, wrote to the plaintiff the letter of the 28th of August.

Letter from C. Oliver O'Donnell to J. S. Wright, dated 28 August, 1856.

J. S. WRIGHT, ESQ'R:

DEAR SIR: Mr. Neilson has requested me to say to you that he will cover for the sch'r "Mary W.," but you must consider it subject to the risk of the policy, not attaching from the unseaworthiness of the vesssel.

Very respectfully, &c.,.
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

Baltimore, Aug. 28th, 1856.

And made the endorsement on the policy of the 27th of August, as follows:

August 27, 1856.

Schooner Mary W., Rio de Janeiro to New Orleans, on ½ cargo, 1830 bags coffee, at $18 p. b., not to attach if vessel be proved unseaworthy, $16,470.

And on the 29th of August wrote to the defendant the letter of that date.

Letter from C. Oliver O'Donnell to A. B. Neilson, Pres't of the Sun Mutual Ins. Co., dated 29th Aug., 1856.

BALTIMORE, *Aug. 29th*, 1856.

A. B. NEILSON, ESQ.,
Pres't of the Sun Mut'l Ins. Co., New York:

DEAR SIR: Your favor of the 28th is at hand. I enclose you papers handed to me by Wm. E. Hooper, relating to damage on Caty Duck or "Storm King." Please notice on report under open policies, which please find herewith. The Hanoverian bark, "Commandeur," under Rob't C. Wright's open policy, Mr. W. gives me the following report of her: "Built at Hamburg, in 1855; 325 tons; owned in Westerhafen, by Capt. and others; stands 3 T. L., 7 years; found in Buredie Veritas of this year, page 365, No. 1875. You will also perceive that I have endorsed per the "Mary W." with the proviso named by you under J. S. Wright's policy, No. 31,054. The ship "Macauley," 38 from Liverpool, arrived at this port this morning.

Very respectfully, your obed't serv't,
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

The plaintiff then further read in evidence the letter of the defendant to O'Donnell, of the 3d of August.

Letter from the Pres't of the Sun Mutual Ins. Co. to C. O. O'Donnell, dated 30th Aug., 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, 30th Aug., 1856.

C. O. O'DONNELL, ESQ.,
Baltimore:

DEAR SIR: We have yours of the 29th inst. We have filled up the form on coffee, per b'k Commandeur at the lowest rate, 1¼ p. c. We think these rates too low by foreign vessels, however well they may rate; but having in all previous cases adopted this course where the standing of a vessel was unexceptionable, we continue to do so, to preserve our consistency. The endorsement you have put on the risk per sch. Mary W., for Mr. J. S. Wright, is practically a nullity. No risk of any kind on any policy attaches if the vessel is proven unseaworthy. The difficulty is, so to prove them. We object to the risk under an open policy per Mary W., for reasons stated in our communication to Mr. R. C. Wright, on the 27th inst., left open for you to read, and to possess yourself of the grounds of our objection. In the present case it is true, that Mr.

John S. Wright has an open policy with us from Rio to the ports in the United States, on coffee, by V. V. He may claim that the risks comes under it, and while this is granted, the pr'm for same is at our discretion. For reasons stated in our letter to Mr. R. C. Wright, in our judgment the vessel is unfit to carry safely a cargo of coffee. Such unfitness, however, makes her not in the ordinary use of the term an unseaworthy vessel. We have no other remedy then, than to name a pr'm, which we think commensurate with the risk, and that we fix at 10 p. c., subject to the conditions of the policy, or 2½ p. c. against that loss. Please communicate this to Mr. W., and notify on which rate he wants the rate entered.

We observe he has made no return to us on coffee from Rio since Jan'y last.

Very respect., your obed. serv't,
ALFRED SETON,
V. Pres't.

N. B.—If Mr. W. wants the risk per sch. Mary W. made, subject to his policy, will not take it, and we can enter only so much on it as the policy now covers at the rate of pre'm named.

And proved that the same was received on Sunday, and was communicated verbally to the plaintiff on Monday.

That on the 1st of September, O'Donnell wrote to the defendant the letter of that date.

Letter from C. O. O'Donnell to A. B. Neilson, Pres't Sun Mutual Ins. Co., dated 1 *Sept.*, 1856.

BALTO., 1*st Sept.*, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mutual Ins. Co., New York:

DEAR SIR: Your favor of the 30th inst. was rec'd. Mr. Wright has not answered yet, concerning the Mary W. I heard, to-day, that Messrs. Hurlbut & Bethert had or intended to libel the sch. "Juana;" for what, I could not ascertain. I enclose letter of above document for Thomas Wilson & Co., per schooner Canton.

Very respectfully, your obed't serv't,
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

And on the 2d, the letter of that date.

Letter from C. Oliver O'Donnell to the Pres't of the Sun Mutual Ins. Co., dated 2*d Sept.*, 1856.

BALTIMORE, *Sept.* 2*d*, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mutual Ins. Co., New York:

DEAR SIR: Your favor of the 2d inst. is received. The follow-

ing is all the information that I can glean in relation to the sugar damaged by the sch. "Juana." The 109 hhds. insured by us, was purchased by Messrs. Hurbut & Bethell, of Messrs. Highland & Woods, of this city, being a part of 180 hhds. bought by the Mess. H. & W., of Messrs. Peter F. King & Co., of New York. It there was taken in charge, and stored by J. P. Vanburger, (who can be found at Messrs. Sturgess & Co.,) at Brooklyn, in Foards' store-houses, and shipped from thence by Messrs. Dorsey & Hoogewerff, of New York, by the sch. "Juana," to this city. The 109 hhds. were all of a lot marked Y; the remainder is still at Foard's warehouses. They cannot tell by what vessel it came to New York.

The circumstances of the libel spoken of by me in my letter of the 30th ult., as brought against the "Juana," by Messrs. H. & B., are these: They think that it can be proven that the damage was occasioned not by stress of weather, but by the carelessness of the captain in not having his vessel properly dunnaged. If this can be proven, this claim on us ceases, as they cannot claim loss from both parties. I have no answer from Rob't C. Wright concerning the Mary W., J. S. W.

Report under open policies herewith.

Very respectfully, your ob't serv't,

C. OLIVER O'DONNELL,
P'r pro. GEO. W. MAHOOL.

On the 2d of September, O'Donnell wrote to the plaintiff the letter of that date.

Letter from O'Donnell to John S. Wright, 2d Sept., 1856.

JOHN S. WRIGHT, ESQ.:

DEAR : I have been requested to say to you by our president, A. B. Neilson, esq., that the endorsement made under your policy per sch. "Mary W.," on coffee, R. d. Janeiro to New Orleans will not attach if vessel is proven unseaworthy, is practically a nullity, and he objects to the risk for reasons stated in a former communication concerning the vessel to Mr. Rob't C. Wright, from whom it may be procured. For reasons stated in this communication, in his judgment, the vessel is unfit to carry a cargo of coffee. Such unfitness, however, makes her not in the ordinary use of the term unseaworthy, and he has no other remedy than to name a premium commensurate with the risk, and fixes a 10 p. c., subject to the conditions of the policy, or 2½ p. c. against total loss. Please communicate to me under which rate you wish the risk covered or entered.

Very respectfully,

C. OLIVER O'DONNELL,
Ag't Sun Mut. Ins. Co., New York.
Per GEO. W. MAHOOL.

Balto., Sept. 2d, 1856.

And that on the 3d of September, the plaintiff wrote to Mr. O'Donnell his letter of that date.

Letter from John S. Wright to C. Oliver O'Donnell, dated 3d September, 1856.

BALTIMORE, *Sept'r 3d*, 1856.

C. OLIVER O'DONNELL, ESQ.,
Ag't Sun Mut'l Ins. Company:

DEAR SIR: I am just in receipt of your letter of yesterday's date. I cannot admit the right of your president to tax me with the enormous rates mentioned by you on the risk per Mary W., as the vessel in the opinion of competent shipmasters was in every way suited for bringing a cargo of coffee with safety, nor would my friends at Rio de Janeiro have shipped coffee for my account by a vessel which, in their judgment, was unfit therefor. Should the vessel rate below A 2, your company was only entitled to an equitable rate, and not to the exorbitant rates stated, but I cannot admit that she rates below A 2, and therefore protest against any such charge, but shall consider the cargo covered under your policy. Under any circumstances I am willing to pay an equitable rate, but in case of disagreement between Mr. Neilson and myself, as to what an equitable rate is, seems to me a fair question for a reference.

Yours, very truly,
JOHN S. WRIGHT.

And which was communicated to the defendant by Mr. O'Donnell in his letter of the 3d of September.

Letter from C. O. O'Donnell to A. B. Neilson, Pres't Sun Mutual Ins. Co., dated September 3d, 1856.

BALTIMORE, *Sept'r 3d*, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mut'l Ins. Co., New York:

DEAR SIR: Your favor of the 2d inst. is rec'd. I enclose you Mr. J. S. Wright's answer concerning the sch. "Mary W." I notified his clerk on Monday, verbally, but on Tuesday I notified him in writing, as he requested. This will explain the commencement of his letter, where he says: "I am just in receipt of your letter of yesterday." I give you some extracts of the surveyor's certificate in the case of the "Juana." It commences by saying that they found the hatches well secured and caulked, and cargo seemed to be in good condition when they were removed, but found on unloading that 71 hhds., &c., &c., of the ground tiers were more or less damaged by sea water and sand; that the vessel, in consequence of supposed heavy weather at sea, leaked badly, and the

ing is all the information that I can glean in relation to the sugar damaged by the sch. "Juana." The 109 hhds. insured by us, was purchased by Messrs. Hurbut & Bethell, of Messrs. Highland & Woods, of this city, being a part of 180 hhds. bought by the Mess. H. & W., of Messrs. Peter F. King & Co., of New York. It there was taken in charge, and stored by J. P. Vanburger, (who can be found at Messrs. Sturgess & Co.,) at Brooklyn, in Foards' store-houses, and shipped from thence by Messrs. Dorsey & Hoogewerff, of New York, by the sch. "Juana," to this city. The 109 hhds. were all of a lot marked Y; the remainder is still at Foard's warehouses. They cannot tell by what vessel it came to New York.

The circumstances of the libel spoken of by me in my letter of the 30th ult., as brought against the "Juana," by Messrs. H. & B., are these: They think that it can be proven that the damage was occasioned not by stress of weather, but by the carelessness of the captain in not having his vessel properly dunnaged. If this can be proven, this claim on us ceases, as they cannot claim loss from both parties. I have no answer from Rob't C. Wright concerning the Mary W., J. S. W.

Report under open policies herewith.

Very respectfully, your ob't serv't,

C. OLIVER O'DONNELL,
P'r pro. GEO. W. MAHOOL.

On the 2d of September, O'Donnell wrote to the plaintiff the letter of that date.

Letter from O'Donnell to John S. Wright, 2d Sept., 1856.

JOHN S. WRIGHT, ESQ.:

DEAR : I have been requested to say to you by our president, A. B. Neilson, esq., that the endorsement made under your policy per sch. "Mary W.," on coffee, R. d. Janeiro to New Orleans will not attach if vessel is proven unseaworthy, is practically a nullity, and he objects to the risk for reasons stated in a former communication concerning the vessel to Mr. Rob't C. Wright, from whom it may be procured. For reasons stated in this communication, in his judgment, the vessel is unfit to carry a cargo of coffee. Such unfitness, however, makes her not in the ordinary use of the term unseaworthy, and he has no other remedy than to name a premium commensurate with the risk, and fixes a 10 p. c., subject to the conditions of the policy, or 2½ p. c. against total loss. Please communicate to me under which rate you wish the risk covered or entered.

Very respectfully,

C. OLIVER O'DONNELL,
Ag't Sun Mut. Ins. Co., New York.
Per GEO. W. MAHOOL.

Balto., Sept. 2d, 1856.

And that on the 3d of September, the plaintiff wrote to Mr. O'Donnell his letter of that date.

Letter from John S. Wright to C. Oliver O'Donnell, dated 3d September, 1856.

BALTIMORE, *Sept'r 3d*, 1856.

C. OLIVER O'DONNELL, ESQ.,
Ag't Sun Mut'l Ins. Company:

DEAR SIR: I am just in receipt of your letter of yesterday's date. I cannot admit the right of your president to tax me with the enormous rates mentioned by you on the risk per Mary W., as the vessel in the opinion of competent shipmasters was in every way suited for bringing a cargo of coffee with safety, nor would my friends at Rio de Janeiro have shipped coffee for my account by a vessel which, in their judgment, was unfit therefor. Should the vessel rate below A 2, your company was only entitled to an equitable rate, and not to the exorbitant rates stated, but I cannot admit that she rates below A 2, and therefore protest against any such charge, but shall consider the cargo covered under your policy. Under any circumstances I am willing to pay an equitable rate, but in case of disagreement between Mr. Neilson and myself, as to what an equitable rate is, seems to me a fair question for a reference.

Yours, very truly,
JOHN S. WRIGHT.

And which was communicated to the defendant by Mr. O'Donnell in his letter of the 3d of September.

Letter from C. O. O'Donnell to A. B. Neilson, Pres't Sun Mutual Ins. Co., dated September 3d, 1856.

BALTIMORE, *Sept'r 3d*, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mut'l Ins. Co., New York:

DEAR SIR: Your favor of the 2d inst. is rec'd. I enclose you Mr. J. S. Wright's answer concerning the sch. "Mary W." I notified his clerk on Monday, verbally, but on Tuesday I notified him in writing, as he requested. This will explain the commencement of his letter, where he says: "I am just in receipt of your letter of yesterday." I give you some extracts of the surveyor's certificate in the case of the "Juana." It commences by saying that they found the hatches well secured and caulked, and cargo seemed to be in good condition when they were removed, but found on unloading that 71 hhds., &c., &c., of the ground tiers were more or less damaged by sea water and sand; that the vessel, in consequence of supposed heavy weather at sea, leaked badly, and the

water, not being able to get to the pumps, was *had* up over the said hds., and damaged as aforesaid, and concludes, by saying: "There was no drainage under the sand ballast to give the water course to the pumps." Signed by Joshua Binney and J. B. Coale, appointed by the insurance agents of this city, &c. I saw it this morning for the first time. Would it be convenient to you to return the a'ge papers of the steamer "F. Raidon," as the parties here have called upon me several times for them. I enclose you J. Henderson & Co's policy on the "Jane Henderson," which they wish renewed for one year from its expiration, on same condition, &c. I gave you so much of the history of the sugar per the "Juana" as I was able to gather in my letter of yesterday.

Very respectfully, your obed't serv't,

C. OLIVER O'DONNELL,
P'r GEO. W. MAHOOL.

I charge 1½, not yet informed Mr. Wright of the rate charged per the "Commandeur," the other companies are all charging, and have entered the same risk at 1½ p. c. Shall I charge the same? Also please find my acc't for August, with receipts, notes, &c., which I hope that you may find correct.

To which the defendant replied in the letter of the 4th of September.

Letter from the defendant to C. Oliver O'Donnell, dated 4 September, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, 4th Sept'r, 1856.

C. O. O'DONNELL, ESQ.,
Baltimore:

DEAR SIR: Your favors of the 2d and 3d inst. are before us—the letter concerning the refusal of Mr. Wright to accept our terms for insurance of the cargo p'r Mary W. We have this morning looked again into the character of this vessel, and our impressions of her inability to carry safely her cargo of coffee are fully confirmed, On her departure hence for California, in '49, she rated in our book A 2½. She hasbeen employed in those seas since that epoch. It is to the rating in our books that our policies refer. We cannot consent to let others or another be arbiters of a rate of p'rm for us. This is a privilege reserved to ourselves in the contract of insurance. Should the rate not meet with the views of the other party, and he informs us so officially, as in this case Mr. Wright has done, the existing contract, as far as the risk in question, ceases. We have accordingly struck the risk from our books, and you will please notify Mr. Wright on the receipt of this of our action in the premises. Herewith you will please find the policy for Mr. Henderson. The damage on the cargo p'r Juana appears by your statements not to have arisen

from any peril of the sea, but I deem to have been caused by the carelessness of the captain, of which he must bear the burthen. The other points of your letter will be replied to to-morrow.

Resp'ly, your obed't serv't,

ALFRED SELON, *V. P.*

Which was communicated to the plaintiff, who thereupon wrote to Mr. O'Donnell his letter of the 5th of September.

Letter from John S. Wright to C. O. O'Donnell, dated 5 September, 1856.

BALTO., *Sept.* 5, 1856.

C. OLIVER O'DONNELL, ESQ.,
Agent Sun Mut. Ins. Company, Baltimore:

DEAR SIR: I have received your communication of this date, stating that the Sun M. Insurance Company had stricken the risk on the "Mary W." from its policy. I notice this communication simply for the purpose of saying, that in every contract, all rights and obligations not expressly defined nor determined by the principles of law or equity, and I protest against and deny any right on the part of the Sun Mutual Insurance Company either to fix an arbitrary rate of premium, or to strike the risk from the policy. I therefore notify you, that I claim to be covered for the said risk under your policy, and at an equitable rate of premium. You will please acknowledge the receipt of this communication.

Yours, truly,

JOHN S. WRIGHT.

Which was upon the same day enclosed by Mr. O'Donnell to the defendant in his letter of that date.

Letter from C. O. O'Donnell to A. B. Neilson, Pres't Sun Mut. Ins. Co., dated 5 September, 1856.

BALTO., *Sept. 5th*, 1856.

A. B. NEILSON, ESQ.,
Presd't Sun Mut. Ins. Co., New York:

DEAR SIR: Your favor of the 4th inst., concerning policy of J. Henderson & Co., on the "Jane Henderson," is rec'd. I return the policy, it not having your signature. I also enclose Mr. Wright's answer concerning that "Mary W."

Reports under open policies herewith.

Very respectfully, your obed't serv't,

C. OLIVER O'DONNELL.
P'r GEORGE W. MAHOOL.

The defendant replied thereto, by its letter of the 6th of September.

Letter from the defendant to the plaintiff the 6th of September, 1856.

(Copy.) OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, Sept. 6, 1856.

C. OLIVER O' DONNELL, ESQ.,
Baltimore:

DEAR SIR: Your favor of the 5th inst. is received. The policy for J. Henderson & Co. on the Jane Henderson is returned herewith, signed.

Reports under open policies noted. Please inform Mr. Wright that we adhere to our views in relation to the case of the sc. Mary W., as *as* communicated in our Mr. Seton's letter of the 4th inst.

Y'r obed't serv't,
A. B. NEILSON, *Pres't.*

* * * * * *

That it adhered to its views as contained in its letter of the 4th inst.

The plaintiff then further proved by said Stewart that upon the 8th of September, he addressed to the defendant his letter of that date.

Letter from C. Morton Stewart to A. B. Neilson, Presd't Sn. Mut. Ins. Co., dated 8th Sept., 1856*:*

BALTIMORE, 8*th Sept.*, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mut. Ins. Co., New York:

DEAR SIR: I called on Mr. John S. Wright this morning, in view of the receipt of a message from him in relation to the "Mary W." Mr. Wright maintains his right to be covered under his policy, but disputes your right to name a rate which he considers exorbitant. He claims that the charge of an additional rate is not to be arbitrarily made by you, and that, in case of a disagreement between himself and you, an equitable additional rate is to be determined upon, either by arbitration, or the more simple mode of dispassionate negotiation.

Messrs. Maxwell, Wright & Co., he alleges, finding that, owing to the scarcity of vessels, they were obliged to resort to a class (schooner) which is not a favorite with their customers, required from the captain of the "Mary W." a *a* certificate as to the condition and standing, which would place them in the proper position towards their correspondents.

The survey was called under the supervision of the American consul, and the persons appointed were captains commanding regu-

lar packets, and intimately acquainted with the requirements for such a voyage.

The survey being perfectly satisfactory, the vessel was chartered by them, and at the current high rate of freight. Under these circumstances Mr. J. S. Wright (who is not a partner of M. W. & Co.) thinks that in the absence of any positive information by you to the contrary, the certificate furnished is sufficient to justify his pretensions to being covered at policy rate of 1½ p. c., until the contrary be proved. The survey of Captain Wolfe, of the "Gallego," and the capt'n of the "Souter Johnny," he holds to be proof positive that she is A 2, for he argues that their reccommendation of her is of such a character as could only be extended to a vessel well in every respect.

At the same time he thinks it but reasonable, owing to your objections to the risk, to show some spirit of compromise (which he claims as his right) of being covered under his policy with you, and I submit his proposition, that in case of total loss, the rate be 1½ p. c. That in case of arrival, the rate, subject to usual average in is to be fixed by standing of vessel after delivery of cargo; and that, if you desire that the "Crescent," or any other first-class company in New Orleans, should name a rate after examination by their inspector, he is willing that any such decision shall be beyond appeal.

Mr. Wright, in calling upon me this morning, intimated that by a recital of his views, I might bring about a desirable result. As agent of the Orient, I have to transmit them a letter from Mr. W., which embodies what is here stated. Mr. W. particularly desires me to state that he does not hold to any particular mode of ascertaining her rate after her arrival in New Orleans, and is willing to consider any proposal emanating from you.

Very respectfully, yours,

C. MORTON STEWART.

To which the defendant replied by its letter of the 13th of September, to Mr. O'Donnell.

Letter from the defendant to Mr. O'Donnell of 13th September, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, Sept. 13, 1856.

C. O. O'DONNELL, ESQ., *Baltimore:*

DEAR SIR: Yours of the 12th inst. is before us. The needful has been done in our register to make it conform to the contents of your letter, as respects the risks per b'ks "Commandeur" and "Windward," and ship "Gallego." You will please find herewith the policy for Mr. Jones, on bark Sophia.

We replied to your telegraph this morning, that Mr. Stewart's letter of 8th inst. had been received. The positions assumed by Mr. S., are so obviously at variance with our views as explained in

our letter of the 4th inst., and goes over the ground which we there controverted, that it would have been a mere waste of time again to revert it. The matter is in a nut shell. Mr. W. had a right to place it under his policy, if he had chosen to pay the pr'm. If he did not like our pr'm, he had time, and the world was open to him to get the risk done or more favorable terms. Having made his choice by refusing to pay the premium we asked, our policy is released from the risk.

Very respectfully, your obed't serv't,

ALFRED SETON, *V. P.*

Which was communicated to the plaintiff. The witness, Stewart, also testified that he had no special authority from the company to act for Mr. O'Donnell, and had no other authority than that contained in the letters hereinbefore produced.

Evidence of Consider Thomas.

The plaintiff then further proved by Consider Thomas that he is of Bath, Maine; has been a mariner for 24 years; that he first saw the Mary W. in Australia, in 1855, at Sydney. She was there surveyed and repaired under the direction of Lloyd's agent (French or English) at that place. Witness took command of her there, and proceeded to Melbourne with cargo, which he delivered safely; thence to Valparaiso, to ballast; thence to Coquimbo, seeking business; thence to Rio in ballast. In Rio had surveys of the vessel made through the U. S. consul. One of the surveys was to say what should be done, and the other to say it was all right. Had met with a succession of gales coming around Cape Horn, which had injured the sails and rigging. The repairs were done, and certified. They tried to make her A 1. She was certified to be fit for any voyage. The witness further proved the bill of lading.

Bill of Lading.

Shipped in good order and condition, by Maxwell, Wright & Co., on board of the schooner called the Mary W., whereof Thomas is master for the present voyage, now lying in the port of Rio de Janeiro, and bound for New Orleans, eighteen hundred and thirty bags of coffee, double bags, weighing one hundred and sixty pounds net each, being marked and numbered, as in the margin, and are to be delivered in like good order and condition at the aforesaid port of New Orleans, (the dangers of the seas only excepted,) unto order or to the assigns, he or they paying freight for the said goods as per charter party, dated at Rio de Janeiro, 18th June, 1856, with primage and average accustomed.

M	B.	1	84
M	A.	1	68
M	C.	$\frac{1}{8}$	444
M	W.	$\frac{1}{15}$	1234

1830 bags coffee, double bags.

In witness whereof, the master of said vessel hath affirmed to six

bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Rio de Janeiro, this 12th day of July, 1856.

Weight unknown to C. Thomas.

* * * * * * * * *

And that, after having signed it, witness sailed in said schooner from Rio de Janeiro, under a charter party, with Messrs. Maxwell, Wright & Co., to carry a cargo of coffee to New Orleans. On the voyage met with pretty heavy weather, which, upon one occasion, knocked the schooner down, but she subsequently righted and proceeded on her voyage, until about the 29th day of August, when she got on the rocks at night. Witness being 76 miles out of his reckoning, does not know how he got there, unless it was the effect of the great gales, which caused an easterly current. At the time he went ashore, he was under double-reefed topsails, wind south or southwest at 11½ o'clock p. m; had the wind free. Allowed 2 to 2½ points for drift, and yet was to leeward 76 miles.

In fifteen minutes after she struck was a wreck. Persons on board with difficulty escaped by climbing from the yard of the vessel to the cliff. The cargo was all lost. The schooner drew in the neighborhood of nine feet, with nine and a half feet depth of hold; was about 150 tons; did not have a sliding keel. In Sydney stopped the well up, and caulked and coppered her; saw her bottom there; she had no centre board; had a 14-inch keel; had a considerable dead rise, 1½ inches to the foot; had her centre board fastened and rivetted up, hanging in her well; she was as strong a vessel as witness ever went to sea in, for one of her size. She was a strong a vessel as could be built; that he took unusual precautions in loading the vessel, and he knew that coffee is a cargo particularly liable to damage.

Had no difficulty in going to windward with the Mary W.; never saw any trouble in the heavy weather doubling Cape Horn; the distance from Australia to Valparaiso is about 8,000 miles. In his judgment was fit to carry a cargo of coffee from Rio to New Orleans; she sailed as well to windward and beating as vessels of sharp build and deep keel.

Cross-examination.

On cross-examination, the same witness stated that this was the first time he ever carried a cargo of coffee; that he did not pretend to know anything about centre boards; that when he speaks of the strength of his vessel, he speaks of what she did to him. He also stated that before he went ashore, he had the wind free all the time, 2 to 2¼ points free, and that he made an allowance of 2½ points all the time.

Evidence of Capt'n Wolfe.

The plaintiff then further proved by Capt'n Wolfe the invoice of the cargo per Mary W. * * * * *

Invoice of 1830 *bogs coffee shipped by Maxwell, Wright & Co. on board the sch'r Mary W., Capt. Thomas, bound to New Orleans, by order for acc't and risk of John S. Wright, Esq., merchant of Baltimore, and consigned to order.*

M/B	1.	84 bags green coffee, 1st quality, wg. 420 ars.....	4.700	1974.000
M/A	1.	68 " " "		
M/C	1.	88 " " "		
	2.	90 " " "		
	3.	104 " " "		
	4.	13 " " "		
	5.	45 " " "		
	6.	104 " " "		
M/W	1.	155 " " "		
	2.	20 " " "		
	3.	81 " " "		
	4.	128 " " "		
	5.	54 " " "		
	6.	52 " " "		
	7.	101 " " "		
	8.	169 " " "		
	9.	51 " " "		

10.	110	"	"	"				
11.	41	"	"	"				
12.	44	"	"	"				
13.	50	"	"	"				
14.	106	"	"	"				
15.	72	"	"	"	.....	8730	..... 4.900	42777.000
	1830 bags new coffee, wg				.....	91.50	ars.....	Rs. 44751.000

CHARGES.

Export duty on 92.64 ars. 12 h., at 3.9000, 9 p. c.....	Rs.	3251.795
Double bags, at 1.200, 2196.000. Porterage and capatazias, 292.8000.....		2488.8000
Commission on rs. 50491.595, at 2 p. c.....		1009.831
		6750.426
	Rs.	51501.426

E. E. Rio de Janeiro, 12*th July*, 1856.

MAXWELL, WRIGHT & CO.

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DR. JOHN S. WRIGHT, Esq., *Balt'e, in account with* MAXWELL, WRIGHT & CO.

1856.			1856.		
July 12.	To inv'ce 1830 bags coffee, pr. schr. Mary W. to New Orleans	51501.426	July 12.	By our dfts. at 90 dys. on Brown, Shipley & Co., L'pool— £3818 11 4 1909 5 8	
" "	Comm'n, draw'g and negot'g, rs. 50914.210, at 1 p. c.....	509.142			
	Brokerage, $\frac{1}{8}$ p. c.....	63.642			
	Stamps on bills	40.000		£5727 17 at 27 d.....	50914.210
				Cash in ourselves.....	1200.000
	Rs.	52114,210		Rs.	52114.210

E. E.

RIO DE JANEIRO, 12*th July*, 1856.

MAXWELL, WRIGHT & CO.

And said witness also proved that he did not know the rate of the Mary W.; that he knew nothing about the rating of vessels; but that he was on the two surveys of the Mary W., in Rio; first overhauld her, and reported what repairs she required, and surveyed her again, and considered her in good order; considered her a seaworthy vessel for the voyage to New Orleans, or any part of the world, and fit to carry coffee. Capt'n Small and witness signed a certificate in regard to her, which he produces.

Certificate of survey.

By the request of Robert G. Scott, jr., esq'r, consul of the United States, we, the undersigned, American shipmasters, did appear on board the schooner Mary W., C. Thomas, master, of San Francisco, and have examined her repairs in hull, spars, sails, and rigging, and found the said vessel in complete order to proceed on any voyage.

(Signed) WILLIAM WOLFE.
Master of Ship Gallego, N. York.
ALFRED P. SMALL,
Master of Ship Souter Johnny.

Rio, June 28th, 1856.

I, the undersigned, consul of the United States at this city, do hereby certify the above to be a true and correct copy of the original on file at this consulate.

[SEAL.] Given under my hand and seal of office, this 28th day of June, 1856.

ROBERT G. SCOTT, JR.

If the centre board was in her, it might weaken her; the well was boxed up, and closed tight. The same witness proved that he sailed for the house of Foster, Elliot & Co., and commanded the Gallego; that he had made a great many voyages between Rio and the United States, and had carried more coffee than any living man.

The defendant read in evidence the correspondence between the defendant and Robert C. Wright.

No. 1. *R. C. Wright's application*, 9 *Aug.*, 1856.

TO THE SUN MUTUAL INSURANCE CO.,
Of New York:

BALTO., 9 *August*, 1856.

Insurance is wanted by Robert C. Wright for acc't of whom it may concern, loss, if any, payable to him, on cargo, per vessel or vessels, with or without advice from Rio de Janeiro, Pernambuco, or Bahia, to any port or ports in the United States, on the Atlantic

or Gulf of Mexico, each two hundred bags of coffee, of separate mark or number in order of invoice, subject to five per cent. average; each two hundred bags, or one hundred bbls. sugar, subject to seven per cent. average; hides subject to ten per cent. average, and each separate interest subject to a separate average; coffee, unless otherwise agreed upon, to be rated at $18 per bag, and other articles at sixty-five cents for milrees of invoice.

Captains of vessels to and from the capes to have the privilege of standing their own pilots, if acquainted. Average premium 1½ per cent. Premium to be paid when the vessel is ascertained; all risks to be reported as soon as known. Amount wanted on this application, $25,000, and to cover one-sixth of each risk; and the amount estimated as used, is to be governed by the principal or value of the article, and not by the premium absolved.

This policy to attach when the present policies with the Sun, Mercantile, N. York, and Independent Mutual Insurance Co's are run out, or be cancelled. To cover as't in't may appear ⅛ of bags coffee (32 c 3,500,) per ship Gallego, from Rio to New Orleans, and 1,000 c 2,500 bags p. sch. Mary W., to a port in the U. States.

Risk per Mary W. declined.

No. 2. *Letter from Mr. O'Donnell to the defend'ts, inclosing Mr. Wright's application, 11th Aug.*, 1856.

(Copy.) BALTIMORE, *August 11th*, 1856.

A. B. NIELSON, Esq.,
Presdt. Sun Mut. Ins. Co., New York:

DEAR SIR: Your favor of the 9th inst. with pol. of Tho's Hooper on brig Baltimore is rec'd. Mr. R. C. Wright to-day closed his present homeward policy with us, and requested another, as per application, covered by this. Reports under open policies herewith.

Very respectfully, your obdt. serv't,
(Signed) C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

* * * * * *

No. 3. *Letter from Mr. Neilson to Mr. O'Donnell, Aug. 12th*, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, Aug. 12th, 1856.

C. OLIVER O'DONNELL, Esq.,
Baltimore.

DEAR SIR: Your favor of the 11th inst. is received. Enclosed find policy for Rob't C. Wright, $25,000, on ⅛ of cargo from Brazil. You will perceive some change in the phraseology of the application in which the other companies, namely: the Atlantic,

Mercantile, and New York, concur, and will send policies similarly worded. The reports, &c., are duly noted.

Y'r obed't serv't,
(Signed) A. B. NEILSON, *Pres't.*

* * * * *

No. 4. *Letter from Mr. O'Donnell to A. B. Neilson, Presd't Sun Mutual Ins. C., August 12th*, 1856.

BALTIMORE, *August* 12, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mutual Ins. Co., New York:

DEAR SIR: Your favor of the 11th inst., and telegraph of to-day is received. I informed M. Wright that you declined taking the risk per the sch'r Mary W., when he handed me a certificate, a copy of which he requested that I should hand to you, which please find herewith. I shall retain the policy until I hear from you. Please telegraph.

Very respectfully, your obed't serv't,
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

N. B.—Mr. Wright also expressed much dissatisfaction at the rate of 1½ p. cent., charged on the Virginian. He says that you have before charged him but 1¼ to New Orleans, which you will find by reference to his policy to be so. Please notice in your next.

Very respectfully, &c.,
C. O. O'D.,
Per MAHOOL.

Certificate referred to.

By request of Rob't G. Scott, jr., esq., consul of the United States, we, the undersigned American shipmasters, did appear on board the schooner "Mary W., C. Thomas, master, of San Francisco, and have examined her repairs, in hull, spars, sails, and rigging, and found the said vessel in complete order to proceed on any voyage.

(Signed) WM. WOLFE,
Master of the Ship Gallego, of New York.
ALFRED T. SMALL,
Master of Ship Souter Johnny.

CONSULATE OF THE UNITED STATES,
Rio de Janeiro.

I, the undersigned, consul of the United States at this city, do hereby certify the above to be a true and exact copy of the original on file in this consulate.

[SEAL.] Given under my hand and seal of office, this 28th day of June, 1856.

(Signed) ROB'T G. SCOTT, JR.

No. 5. *Letter from R. C. Wright to the Presd't of the Sun Mut. Ins. Co., New York, August 13th,* 1856.

BALTIMORE, *Aug. 13th,* 1856.

TO THE PRESIDENT OF THE SUN MUT. INS. CO.,
New York:

DEAR SIR: I am advised by your agent in this city of your acceptance of any proposal for insurance, which is in order. I am further advised that you object to the risk by the schooner "Mary W." In relation to this vessel, you have been furnished with a copy of the certificate made before the consul, at Rio, by Capt'ns Wolfe and Small, masters, respectively, of the ships Gallego and Souter Johnny; that they have examined said schooner, in hull, spars, sails, &c., and found her in complete order to proceed on any voyage. From the letters to me from Maxwell, Wright & Co., I make the following extracts, viz:

19th June. "We have taken up this vessel for a northern or southern port, at * * her charter depending upon the captains giving us a written certificate of thorough repairs to our satisfaction. We have had her examined by Capt'n Wolfe, who tells us that she will deliver as clean and good a cargo as any vessel." And 2d July. "Enclosed please find a certificate relating to the condition of this vessel, from which you will observe that she has been properly repaired, and in good condition for any voyage." Capt'n Small, of the Souter Johnny, is a stranger to me; but Capt'n Wolfe, of the Gallego, has sailed from your port for many years in the employ of Messrs. Foster, Elliot & Co., and must be favorably known to you, and give importance consequently to his certificate. The caution exercised evidently by my Rio house in this transaction, should also give you confidence.

I hope these remarks may induce you to look upon the risk per Mary W. with more favor, and that you may, on consideration, take the risk upon her. Please shew this letter to the president of the Atlantic, who takes the same position with yourself, as I am anxious to keep my line alike on all the six policies I have just applied for. Your obed't serv't,

ROB'T CLINTON WRIGHT,
Per W. R. JACKSON.

Letter from the defendant to C. O. O'Donnell, 14th August, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE COMPANY,
New York, 14 *August,* 1856.

C. OLIVER O'DONNELL, ESQ., *Baltimore:*

SIR: We have your favor of the 13th inst. Enclosed please

find our answer to Mr. Wright's communication in respect to risk per Mary W. After having read it, please send and hand to him. The risk you order cancelled under Mr. Wickens, p'r open policies, has been so done. The risk p. Hellen, under Th's Whitridge & Co., open policy, we have altered to conform to your letter, with the exception of the av'ge on sugar. 7 p. c. is that provided by the policy, and we do not deviate from the proviso. We replied to you by telegraph what the rate of p'm would be on J. Crosby & Son's application.

Very respectfully, your obed't serv't,

ALFRED SETON, *V. P.*

Letter from the defendant to R. C. Wright, 14th August, 1856.

OFFICE OF THE SUN MUTUAL INSURANCE CO.,
New York, 14 *August*, 1856.

ROB'T C. WRIGHT, ESQ.,
Baltimore:

DEAR SIR: We have your favor of the 13th inst. Our objections to a cargo of coffee per schooner Mary W. arise chiefly from the model of the vessel. She is flat bottomed, originally with a center board, and built to have access to the shallow waters of New Jersey. We have learned from experience that vessels of this form will almost invariably "blow," and this renders them unfit to carry safely a cargo of coffee. We should be very happy to participate in such portions of your business as you may be pleased to offer us, and would unite our share of the risk now in question could our judgment in any view approve it. The other institutions with which you have policies may not reason as we do, and may be inclined to divide it among them; but, for ourselves, we regret our inability to change our views in the matter. Your letter has been communicated to the presd't of the Atlantic Mutual Ins. Co., as requested.

Very respectfully, your ob't serv't,

ALFRED SETON, *V. P.*

Letter from C. Oliver O'Donnell to defendant, August 15th, 1856.

BALTIMORE, *Aug.* 15, 1856.

A. B. NEILSON, ESQ.,
Pres't Sun Mut. Ins. Co., New York:

DEAR SIR: Your favor of the 14th inst. is received, and letter therein delivered as requested to Rob't C. Wright. They no longer insist on the acceptance of the risk p'r "Mary W." Did you note the ship Gallego under their new policy? I have rec'd no answer to my inquiry concerning the bark Virginian. See letter of 12th inst. I telegraphed this morning requesting you to place the risk p'r the "A. Dexter," p'r J. Crosby & Son, under their policy, No. 25,536. I enclose papers connected with loss on hams, shipped by

Wm. Wilkins & Co., p'r the ship Cheesboro, to Liverpool, under his open policy.

Very respectfully, your obed't serv't,
C. OLIVER O'DONNELL,
Per GEO. W. MAHOOL.

March 15th, '56.

And proved that Messrs. Robert C. Wright and John S. Wright, the plaintiff, are brothers, and had the same place of business in Baltimore, at the time of these transactions, and that Mr. Jackson, the clerk, whose name appears in the correspondence with both of the Messrs. Wrights, acted during the period of said correspondence as the clerk and agent of both of said gentlemen.

It was also proved that Mr. Robert C. Wright was at the period of said correspondence a partner of the commercial firm in Rio de Janeiro, of Maxwell, Wright & Co., of which firm the plaintiff was not a partner, nor had Robert C. Wright any interest in the business of the plaintiff. Nor did the plaintiff and said Robert C. Wright ever represent themselves as connected in business.

The defendant then read the following depositions, which it is agreed shall be inserted, without copying the certificates of the commissioners into the record:

Deposition of Samuel J. Waring, witness for the defendants, taken before William S. Constant, notary public, New York, 5th day of April, 1858.

U. S. CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

Samuel J. Waring, being duly sworn as a witness on the part of the defendants in both the above-entitled causes, and in the presence D. D. Lord, esq'r, acting as counsel for the plaintiff therein, doth depose and say, as follows:

I reside in the city of New York; have been a shipmaster for many years; inspector of the Atlantic Mutual Insurance Company for twenty-seven or twenty-eight years. The book now produced is the orginal register, No. 2, of schooners of the Atlantic Insurance Company, and was begun in 1841; it contains the entries in relation to the schooner Mary W., of which the following, being all the entries with one exception, are in my handwriting, and made by me:

Date of survey.	Vessel's name.	Master's name.	Hails from.	Owner or consignee.	Tonnage, deck, and draft.	When and where built.	Material, fastenings, and model.	Rate.
Jan'y, '47.	Mary W.	Scull.	Richmond, N. J.	Capt'n.	145 S. D. 9.	Richmond, N. J., 1846.	Oak, J. F., & C. J. C.	A 2.
April, '47.		Cathcart.						A 2½.
Sept. '47.		S. Baker.	N. York.	California				A 3.
May, '48.		Thomas.		Co.				

Lost on passage from Rio to New Orleans, Sept., 1856.

REMARKS.

Centre board, good of kind, well fitted, on dock painting, &c.

May, '48. Iron punched in and re-fastened with copper, false keel put on, c. board well stopped up, coppered, and put in order for California. Jan'y '49. Masts and bowsprit too long.

The foregoing entries are all made by me, and in my handwriting. The following were made by Capt. Farnham, assistant inspector of the Atlantic Insurance Company. Repairing at Rio, '56. These are all the entries in relation of the Mary W., in the Register.

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Under the date of Jan'y, '47, I entered her as A 2; that is what we supposed to be her fair character at that time, and standing as a coasting vessel. She was built as a coasting vessel, and not well calculated for a long voyage. She was a common built and common model coasting schooner, with flat bottom and centre board. Her material was oak, &c., and she was iron fastened in the first place; afterwards, she was repaired and copper fastened.

When I first rated her, she was very nearly new. I saw the vessel, and examined her in January, '47. She was then very nearly new. The next time I saw her was in April, '47. The next time again was in May, '48. She was then painting on the dock. In Jan'y, '49, she was repaired and fitted for California, and at that time I think it was, that I changed her rate in the register to A 2½. The last entry of rate, A 3, doubtful, I think, was put in when she was at Rio repairing, in June, '56. A 3, doubtful, is lower than A 3. The usual rates of the Atlantic Insurance Company are, A 1, A 1½, A 2, A 2½ and A 3. A 3 good, A 3 doubtful, and A 3 poor, and B when the vessel is insurable. I should think the Mary W. was a very unsafe and a very improper vessel to carry a cargo of coffee in from Rio to New Orleans, in June, 1856; but I want to be understood that this is partly guess-work, for I did not see the vessel at the time, or after she was entered A 3 doubtful on my book. I judge that she was an unsafe and improper vessel to carry coffee from the natural wear and tear that had taken place, and from newspapers and other reports which I heard from Rio. I think the model and character of the Mary W. were badly calculated for carrying heavy cargoes and long voyages.

The reasons for this opinion are, that she was a small vessel, rather lightly built, flat bottomed, and her iron fastenings had been materially disturbed. I do not remember particularly at present, but I feel I can judge from the entries in my handwriting how the alteration in Jan'y, '49, was made, sufficiently to give a definite idea of it. In the first place, the iron fastenings were probably punched in half way through the plank, and plugged with pine plugs. The centre board was taken out, and the vacancy in the keel stopped up with a piece of timber, and bolted crosswise through, caulked and made tight, false keel was put on, the vessel caulked and coppered. The punching in the iron spikes, and coppering over, had a tendency to weaken her. It at this time that I rated the vessel A 2½. This was the last time I saw the Mary W.

Cross-examined by Mr. D. D. Lord, of counsel for the plaintiff.

I think she was an unsuitable vessel when she was new, for carrying a cargo of coffee. I considered her so, because she was small, single-decked, and flat-bottomed. She was likewise rather weakly built. I mean to carry a cargo of coffee from Rio to New Orleans. She might probably have answered to carry a cargo of coffee a short coasting voyage. I should call a short coasting voy-

age from New York to Boston, Philadelphia, or Chesapeake Bay. I should think she was an improper vessel for carrying a cargo of coffee from Boston to New Orleans. On short passages, coasting vessels are in the habit of making harbor when the weather is stormy, and ordinarily do not go to sea until they see a fair prospect of making the run with the weather as it was at the time of starting. She could have put in on a voyage from Boston to New York, but not with the same facility, as on a voyage from New York to Chesapeake Bay. It is a sea voyage from Boston to New Orleans, ordinarily occupying about twenty days. She could not have put into New York, as well as if she were bound from Boston to New Orleans, because her course was at sea. She would have left the land at Nantucket, and made a straight course for the Bahamas, which would have taken her a week or ten days. She could have put in at the Bahamas. She would then have to cross the Bahama banks, and might have put in at Havana or Key West. She would then cross the gulf, and the only places where she could put in would be Pensacola or Appalachicola, which would double the distance. I think she might keep in shore along the coast on such a voyage, until she got to Cape Florida. At Cape Florida, she would encounter the gulf stream, and without extraordinary good luck could not get round. There is a way in which I think this vessel might have made a coasting voyage from Boston to New Orleans, with a cargo of coffee. I have never heard of such a voyage being made. I think she might have made a coasting voyage from Rio to New Orleans, but I should think it would be very unnatural and, practically, nearly impossible. When I last saw the vessel, I think she might have carried a cargo of coffee from New York to Philadelphia, or the Chesapeake Bay, but I should have considered it a very poor risk.

Re-examined by defendants' counsel.

This vessel being new, and well-built of her class, I should not have rated her A 1. We never rate single deck vessels of that size and description, even the best of them, higher than A 2. The proper rating of vessels is a matter of which very little is generally known by masters of vessels. It is a business of itself, and confined to inspectors of insurance companies. The voyage spoken of from New York to New Orleans, following the indentations of the coast, would materially enhance the risk.

There are harbors along the entire coast for vessels of that class at no very great distance. At a rough guess, every one or two hundred miles.

SAMUEL J. WARING.

Sworn to before me this 5th day of April, 1858.

WILLIAM S. CONSTANT.
Notary Public, New York.

Deposition of David Gillespie, witness for the defendants, taken by William S. Constant, notary public, New York, 9th April, 1858.

U. S. CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

David Gillespie, being duly sworn as a witness on the part of the defendants in both of the above-entitled causes, and in the presence of Daniel D. Lord, esq'r, acting as counsel for the plaintiff therein, doth depose and say, as follows:

I am inspector of the Union Mutual Insurance Company, and have been such inspector since October, 1854. The book now produced is the original register of schooners of that company, commencing in 1846 or 1847. There is an entry in that book in regard to the schooner Mary W. The following is the entry on page 259, (taken subject to exceptions on the part of Mr. D. D. Lord, counsel for the plaintiff.)

* * * * * * * *

Date.	Name.	Master.	Port belonging to.	Tonnage, deck, and draft.	Where built.	Fastenings.	Rate.
June, '47.	Mary W.	Scull.	Richmond.	145.	Bridgeton,	C. F.	A 2.
Jan'y, '48.		Cathcart.		1 d'k.	N. J., 1846.		
March, '48.		Cathcart.		8½.			
Jan'y, '49.							

C. & E. Oct. 7, '56. Totally lost on Cape Corrientes, from Rio for New Orleans. Cargo, 1,800 bags of coffee.

REMARKS.

Oak, fair built, clamped, centre board, good for her class, flush deck, flush deck trunk cabin. Jan'y, '49. On dock and mettled, and going to California.

The entry, "Bridgeton, N. J.," was written after an erasure, and the C. F., which means copper fastened, is over an erasure. The words in red ink are in the handwriting of Capt. Fraser, now one of the inspectors of Union Mutual Insurance Company. The letters C. and E., mean Courier and Enquirer. The following entries, with the exception mentioned, is in the handwriting of Capt'n Lee, to the best of my knowledge. He was inspector of the company at that time.

I first saw the schooner Mary W. in San Francisco; I was wharfinger of Central wharf, the only real wharf there, at that time; I took charge of this wharf the 1st of January, 1850, and saw this vessel either in 1850, '51, or '52; I saw the vessel a number of times; I was on board of her; she was a fore and aft schooner of common New Jersey build, flat bottomed; she was of the ordinary class of coast and river schooners built in New Jersey. She had not a centre-board at that time that I am aware of; at that time her fair rate was about A 3. I should say she was not a proper vessel to make a sea-going voyage with a cargo of coffee. That class of vessels damage cargo by what we sailors call "blowing," that arises from her rolling. This results from the model of a flat bottomed vessel; I have followed the sea for a little short of twenty years. The harbor of San Francisco is very bad as regards worms, and the damage they do to vessels. The Mary W. was in or about San Francisco, when I left there in 1854. She was engaged in the lumber and general freighting business on the river, and along the coast.

It is the universal practice of marine insurance companies to have an inspector or inspectors of vessels, and to keep registers of vessels of the various classes, and those registered are records of their standing, rate, character, and other circumstances connected with them. The vessels of the model and build of the Mary W., made with a centre-board, when new, would rate A $2\frac{1}{2}$, and now the better class of centre-board vessels rate a little better than A $2\frac{1}{2}$, but not A 2. The insurance companies having fixed an extra rate of premium to vessels entering A $2\frac{1}{2}$, they have a way of marking them at an intermediate rate.

Cross-examined by Mr. D. D. Lord, of counsel for the plaintiff.

I cannot tell at what time I saw the Mary W. at San Francisco; I cannot tell who was her master; I cannot tell how often I went on board of her; I cannot say that I went more than once; at the time I went on board, I rather think she was loaded; I could not state positively what I went for; at the time I went on board, I rather think she was loaded, but I could not state what with; I never went on board for the purpose of examining her, and never made a very thorough examination; I have a distinct recollection of seeing her at Central wharf many times, and have no doubt I went on board many times for the purpose of collecting wharfage, or other purposes, but I cannot distinctly recollect any time; she had at that time a half cabin on deck; I have no recollection of any time when I saw her copper; I cannot say whether, *I cannot whether* she was metaled with copper or zinc; I cannot say positively whether the well for her centre-board was in her or not, but my impression is, that there was no well there; I do not recollect ever going into her hold; I never had any occasion so to do; my object in going

on board was, to see either the captain or officers, and I saw them either on deck, or in the cabin; I could not say how much water she drew when loaded, nor how much when light. I do not remember positively either her length or breadth; I do not remember her being either longer or shorter for her breadth than is usual for that class of schooners; I never saw her out of water to my knowledge, but I may have done so sitting in the mud; at that wharf I had a rise and fall of from six to ten feet, and I could haul light vessels up. I have no recollection of having ever seen her setting in the mud. I cannot state whether she was deeper or shallower than usual with vessels of her class; she was about the same.

Question. As you have not seen her out of water, and not been in her hold, how can you say that she was about the same depth as other vessels of her class?

Answer. From her being engaged in the river trade, and my being able to put her to the dock where vessels of much depth could not be put; besides, though not able to describe time and place, I have a vivid recollection of her general appearance.

Question. Do you mean that you have a vivid recollection of ever having been in her hold, or of having seen her bottom?

Answer. As I have stated, of her general appearance, but I have no vivid recollection of ever having been in her hold, or seen her bottom. I cannot swear that I have not. I was not connected with insurance companies when in San Francisco; I was connected with the Central wharf from January, 1850, to May, 1854. During that period there were a vast number of vessels coming to the wharf. They were of all classes, ships, brigs, schooners, steamers, sloops, launches, &c.; I never saw the Mary W. before I saw her in San Francisco. She had her name on her stern, and I am not aware of her having it on her bows. I do not know whether she had the name of the port she hailed from there or not; I cannot say where she was built, nor how she was fastened; I never knew her as a centre-board vessel, nor of my own knowledge whether she had a keel.

Re-examined by Mr. A. Hamilton, as of counsel for the defendants.

This vessel was engaged in a wearing business, where labor, provisions, and stores of all kinds were exceedingly high, as also repairs on vessels—and such vessels were generally more or less in a dilapidated condition. Completion in business preventing a corresponding remuneration for services rendered.

Question. According to the best of your recollection, had the Mary W. snffered from the causes you have mentioned, at the time you last saw her in San Francisco, and, according to the best of your recollection, what her condition at that time?

Answer. She had suffered, and her general condition was poor.

Re-cross-examined by Mr. Lord, as of counsel for plaintiff.

She appeared to have suffered from the cause I have mentioned, by chafes and wearing of rigging. I do not know of anything else.

Question. What do you recollect of her condition showing her to have been poor?

Answer. I recollect her having chafed rigging, spliced ropes, and other things peculiar to a sailor's eye.

Question. What are those other things?

Answer. A variety that meets a sailor's eye in looking at a vessel. I cannot answer this question any further.

DAVID GILLESPIE.

Sworn to before me, this 9th day of April, 1859.

WILLIAM S. CONSTANT,
Notary Public, New York.

Deposition of A. C. Marshall, witness for defendants, taken before William S. Constant, notary public, New York, 7th April, 1858.

U. S. CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

A. C. Marshall, being duly sworn as a witness on the part of the defendants in each of the above causes, and in the presence of Mr. D. D. Lord, of counsel for the plaintiff therein, doth depose and say as follows:

I reside in Brooklyn; I have been a shipmaster and inspector of marine insurance companies for many years; I have been inspector of the Orient Insurance Company since its formation in March, 1854; I never saw or examined the schooner Mary W.; she has been in the port of New York to my knowledge since the company was formed in 1854; I have never made any entry, or rated her in the company's books.

A. C. MARSHALL.

Sworn to before me this 7th day of April, 1857.

WILLIAM S. CONSTANT,
Notary Public, New York.

Deposition of Alexander B. Clark, witness for the defendants, taken before William S. Constant, notary public, New York, 17th March, 1858.

U. S. CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

Depositions of witnesses taken on behalf of the defendants in each of the above-entitled causes, in the presence of Mr. D. D. Lord acting as counsel for the plaintiff in each of said causes.

Alexander B. Clark, being examined by defendants' counsel, testified as follows:

I reside in the city of Brooklyn, and have been a shipmaster for many years; for the last ten years inspector of the Sun Mutual Insurance Company, of this city. That company keeps a register, in which the standing and rates of vessels are entered. The schooner "Mary W." is entered in that register for the first time, in January, 1847. (Excepted by the plaintiff's counsel in relation to the entries in the book, and taken subject to such exception.) She was then rated at A 2½. The following is a true copy of the entries in said register of and concerning said schooner made at that time: "January, 1847, Mary W.," (master's name,) "Scull," (belonging to "Richmond, N. J.,") (145 tons,) "one" (deck,) 9 (feet draft of water,) (built at) "Richmond, N. J.," 1845–'6, (A D,) "iron" (fastened,) "2 chains;" (rate) "A 2½; (remarks,) "oak fair built and fastened; centre board well fitted, sails and rig., new trunk "cabin." The entry, of which the above is a copy, is in the handwriting of Captain Humphrey Ricketson, at that time the inspector of the Sun Mutual Insurance Company, and whose duty it was to examine, report, and enter in the register the standing and rate of vessels, the port at New York. The entries Oct., '47, and Dec., '47, and of Scull, master, are in the handwriting of Captain Lewis Weiderholt, at that time inspector of the company.

Question. Did you ever see the said schooner; if yea, when and where, and did you inspect her?

Answer. I have seen the schooner; I surveyed her the first time in May, 1848; she was then in the port of New York.

Question. Describe the said schooner.

Answer. She was at that time in good order; she was a centre-

board schooner; I entered in the register the date of that survey, and the following remarks: "A superior vessel, except centre-board, May, 1848, all in good order."

Question. Did you afterwards and when next see and survey said schooner?

Answer. I did see her again next in January, 1849; I found her on the same dock; they were then taking out the centre-board and the well, and they planked over the opening in the bottom, and replaced the bottom plank. I made the following entry at that time in the register aforesaid: "Jan'y, '49, docked, caulked, and coppered, the centre board taken out, the bottom planked, "repaired." I next saw her after she came off the dock. After she came off the dock, and when she was taking in cargo, I made in the register aforesaid the following entry: Jan'y, '49; California; let her go."

Question. Please to explain the meaning of the words "California, let her go."

(Excepted to.)

Answer. I meant that she was bound to California, and by the words "let her go," that she was not insurable for a sea voyage, as a remark to indicate for the company to let her alone; to let her slide.

Question. When, if ever, did you again see this schooner?

Answer. I never saw her after she left here in 1849.

Question. If this schooner originally rated A 2½ on the books, what effect, if any, would taking out the well and centre-board have upon her rate and standing?

Answer. I think it would weaken the vessel, and lower her rate half a figure, so that she would then rate A 3.

Question. Describe the model of this schooner, and for what description of navigation she was suited.

Answer. She was a very flat vessel, and drew loaded nine feet, and was suited for the navigation of shallow waters; she was built expressly for that purpose.

Question. When on the dock and being sheathed with metal?

Answer. I observed the metal placed over iron bolts; I saw some twelve iron bolts not driven in.

Question. Taking into consideration the model of this schooner and her size, was she a suitable vessel for the transportation of a cargo of coffee from Rio to an Atlantic port in the United States, speaking from your examination of her in 1849?

Answer. No. In my opinion, she was not, on account of her model; she was very flat, and apt to get water into her bilgers; on account of her model, and laying over a little, the pumps can't reach the water in the bilges.

Question. Can a flat-bottomed vessel be kept free of water as easily as one with more dead rise?

Answer. She can, if you keep them upright.

Question. Which is most easily freed from water, a vessel with a given quantity on a flat bottom, or a vessel with the same quantity and more dead rise?

Answer. If they were immediately on her bottom, if the vessels were upright, then there would be no difference.

Question. Then please to state why, as respects water in the hold of a flat-bottomed schooner is not as well adapted to carry a cargo of coffee as a vessel having more dead rise.

Answer. There is more space in a flat-bottomed vessel for the water to scatter, and more likelihood to damage the cargo, ten to one; a flat-bottomed schooner is quicker in rolling from side to side than a vessel with more dead rise.

Question. Which has the easiest motion in rolling, a flat bottomed or a vessel with dead rise?

Answer. A flat-bottomed will roll from side to side three times, where the vessel with the dead rise will roll once.

Question. What effect upon the water in the hold does this motion produce?

Answer. Of course this water is kept constantly in motion, and rushing past the pump, strikes against the bilges of the ship and washes through the ceiling.

Question. Which is the more apt to blow, a vessel of the model of the Mary W. or one with more dead rise?

Answer. The flat-bottomed.

Question. In the years 1855 and 1856, what was the insurable rate and standing of the "Mary W.?"

(Objected to.)

Answer. In our company she would have no rate then.

Question. In either of those years, from your experience as a shipmaster and inspector of vessels, was she a fit vessel to have carried a cargo of coffee from Rio to the United States?

Answer. In my opinion she was not, and that was my opinion before she left in 1849.

Question. What is the character of coffee as a cargo?

Answer. It is a heavy cargo, and liable to damage.

Cross-examined.

Alexander B. Clark, being cross-examined by D. D. Lord, for the plaintiff, saith: The only rate of the schooner Mary W. given in the register aforesaid is that fixed by Captain Ricketson, viz: A 2½; when I saw her in May, 1848, I did not set down for her any different rate, because I found the same as she was registered on the book. When I saw her in January, 1849, she was docked, caulked, and coppered, and her centre-board then taken out; I don't recollect who was doing these repairs and alterations; I was twice to see her while on the dock; I remained the first time half an hour; the second time I supposed I was there an hour and a half;

I saw they were putting copper on over iron fastenings, which made me a little more particular. The first time I was there they were caulking and taking out the centre-board and well; the second time they were not working at the well; they were sheathing; I do not know how long they were engaged in taking out the well; it could not be done in a day; there was one day interval between my visits; I think they put a false keel over where the centre-board came through the bottom. It is possible to take a well and centre-board out of a vessel and leave her as strong as before; putting in bilge and sister kelsons and painters forward and abaft, would make her as strong as before.

Did you see whether this was or was not done to that schooner?

I do not know about sister kelsons, but bilge kelsons and painters they did not; I know that they did not, because I was in her after she came out from the dock; I was on board of her after she came off the dock, and before she commenced loading; she had no ballast in her at this time; she was lying alone by the screw dock, at or near Pike street, in the East river, N. Y.; I think this was the day she came off the dock; I am pretty sure of it. When I saw her in January, 1849, I did not alter her rate. Copper is generally two or three cents a pound dearer than yellow metal. When I first saw her on the dock, some of the carpenters or captain, or some one that was interested, told me they were going to drift out the iron fastenings to replace them with copper; by drifting out, I mean driving out the iron bolts altogether from the hull. I did not see them doing this, but took it for granted they were going to do it; I did not at any time see any copper bolts.

When I went the second time they were putting paper on the hull, and metal or copper over it. I say I do not know whether it was metal or copper. I have no recollection, except from the entry; the entry says it was copper; but at that time, in 1849, we called yellow metal copper, therefore, I cannot swear that it was copper; but I cannot swear that it was not; from its being put down copper in my book, I should be inclined to think it was copper. When I saw her on the dock the second time, she had the paper laid over all her bottom under the copper except some ten or twelve feet on each side abaft; there I saw the iron spikes referred to in my direct examination. I could not see under the paper, whether the spikes were iron or copper. The date of the last entry in our register, June, '56—I mean the last entry respecting the schooner. It is not my business to take risks for the company; I mean, when I say in my direct examination that this schooner had no rate in our company in 1855 and 1856, that I did not consider her insurable; I did not consider her insurable for a foreign voyage.

I would consider her insurable to Philadelphia or Baltimore, from New York.

The only expression in my register showing that I did not consider her insurable, is as follows:

"Jan'y, '49; California; let her go."

The expression means more than not to insure for California. It means not to insure her for any foreign voyage. She had a rate for domestic voyages all the time; this rate was A $2\frac{1}{2}$. When I say in my direct that in 1855 or 1856, that she had a rate, I mean she had no rate for foreign voyages, but for coastwise she rated $2\frac{1}{2}$. The register is open to the inspection of any one wishing to ascertain the standing of vessels. I never have had any orders from Mr. Neilson to refuse giving the rate of any vessel when applied for. No one, however, is allowed to look into the register unless the inspector is present, or they have permission from some other officer.

The inspectors of the different companies sometimes differ, though rarely in regard to the rate of vessels. When old vessels have been repaired, they differ sometimes half a figure. The witness adds, never refuse any one applying to know the standing of vessels from the register.

Re-examined by the defendants' counsel.

Being re-examined by defendants' counsel, witness states by the entry under date of January, 1849, of the word "California," I mean that she was then up for California. The schooner "Mary W." was of the usual class of coasting schooners; not one in a hundred of them makes sea voyages or foreign voyages. A keel instead of a centre-board with her flat model, would not improved her as a sea-going vessel. The taking out of the well without putting in the pointers and kelsons, would have a tendency to diminish her strength. I don't think she was any better after her well was taken out in January, 1849. I think, on the contrary, her strength was diminished.

Question. From your experience as inspector and shipmaster, what would be the effect of metaling or coppering over iron, as described by you in the after part of this schooner in 1849?

Answer. I think in three years the metal or copper would destroy the iron.

The schooner "Mary W." never returned to New York, nor did I inspect her after January, 1849.

Cross-examined.

I could not tell whether the bolts under the paper were copper or iron, but I presume they *they* were copper, because they told me they were going to re-fasten her; those I did see were iron.

A. B. CLARK.

Sworn to before me this 17th day of March, 1858.

WILLIAM S. CONSTANT,
Notary Public.

Deposition of Augustus Proal, witness for the defendants, taken before William S. Constant, notary public, New York, 29th March, 1858.

UNITED STATES CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

Augustus Proal, being duly sworn as witness on the part of the defendants in the each of the above-entitled causes, in the presence of D. D. Lord, esq'r, acting as counsel for the plaintiff therein, doth depose and say as follows:

I reside in New York; I was a shipmaster for twenty-eight years; am now inspector for the New York Mutual Insurance Company; have been such inspector for fifteen months. The company keeps a register for the standing and rates of all vessels. This is the register for schooners beginning in 1842. (The book being here produced and shown to witness.)

The schooner "Mary W." is entered on the register as A $2\frac{1}{2}$.

Date of survey.	Vessel's name.	Master.	Where owned.	Owner or Consignee.	Tons, deck, or draft.	Where built.	Materials and fastening.	Cables. Size.	Cables. Length.	Rate.
Jan'y, 13, '47.	Mary W.	Scull.	Richmond.	Capt'n and others.	145. 1. 9.	Bridgeton, N. J., 1846.	Oak, I. F. Y. M., '49.	$\frac{7}{8}$ and $\frac{15}{16}$	45 ea.	A $2\frac{1}{2}$.
April, '47.		Cathcart	Bridgeton.	James Bishop & Co.						
Jan'y, '48.			New York.							

Lost between Rio and New Orleans, 1856.

REMARKS.

Fair built, clamped, centre-board, sails and rigging new, trunk cabin, at Baltimore, Aug., '48, report, 768, on dock, '49, took out centre-board, and metaled over iron fastenings.

Sun Mutual Insurance Company vs. *Wright.*

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The foregoing is a true copy of entries in said register, of and concerning said schooner Mary W. The entries are in the handwriting of Captain H. Merry, who was at that time inspector of the New York Mutual Insurance Company, the sole inspector, and it was his duty, as such inspector, to inspect and class vessels, and enter their rate in the register, except the following, which was made by me: "Lost between Rio and New Orleans, 1856," and in column of remarks, "on dock, '49, took out centre-board, and metaled over iron fastenings."

(The foregoing is taken subject to exception of plaintiff's counsel as to that part not in the handwriting of the witness.)

I have never seen the Mary W. Centre-board vessels are adapted generally to river and shoal-water navigation, and not well adapted to ocean navigation. A flat-bottomed vessel—centre-board vessels are always flat-bottomed—labors more (i. e. rolls more) in a sea voyage than one with more dead rise. And a small amount of water on the great surface of the bottom, which the pump would have there when it sucked, would be sure to damage the cargo in the bilge as she rolled, or, in technical phrase, the water "blows"—that is to say, the water finds its way through the seams, and damages the cargo. A centre-board vessel always rates lower than one with a keel for a sea-going vessel. The strength of a centre-board vessel is inferior to the strength of a keel vessel, because the floor timbers are cut away throughout the entire length of the well or centre-board, and the keel and kelson are also cut through. Putting a keel on a centre-board vessel would improve her as a sea-going vessel, but that alteration would not remedy the defect of the model, nor adapt her as a sea-going vessel.

If the well and centre-board were taken out, and the bottom planked over, it would not improve the strength, unless new floor timbers were put in, and new kelson, and such other arrangemnts as would be put in if she had been built originally as a keel vessel.

Cross-examined for plaintiff.

To make her as strong as before, after taking out the well, in addition to the new deck beams, she would require new floor timbers; the keel should be filled up, and the kelson properly secured. She would not, in all cases, require new deck beams, but only when the well comes up to the deck. She would, in all cases, require new floor timbers.

Question. Will a flat-bottomed vessel roll as much with a heavy cargo, which puts the principal weight near the keel, as with a light cargo, which puts the principal weight near the deck?

Answer. I do not think she would. A flat-bottomed vessel might be so stowed with a cargo of a heavy nature as not to roll as much as with a cargo of a lighter nature. Flat-bottomed vessels do not all roll in the same degree; the degree depends upon the

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model, and it is impossible to tell without having seen the vessel. Never having seen the Mary W., I cannot tell how much she would roll, as compared with other centre-board vessels. Coffee is a heavy cargo. I suppose there are small keel vessels as shallow for their length and breadth as centre-board vessels. By small vessels, I mean vessels of a hundred or hundred and twenty tons. I do not think you would often meet with vessels of this description over a hundred tons, and never sea-going vessels. I mean that such vessels are never built with exclusive reference to sea-going navigation, but with reference to the harbors into which they go. I have never been to sea in any of these craft—I mean centre-board vessels.

Re-examined.

Being re-examined, witness states that a first-class centre-board vessel, when new, will rate A 2; that is her best rate.

The register belongs to the New York Mutual Insurance Company, and is in daily use in their office.

AUG'S PROAL.

Sworn to before me this 29th day of March, 1858.

WILLIAM S. CONSTANT,
Notary Public, New York.

Deposition of Charles Dennis, witness for the defendants, taken before William S. Constant, Notary Public, New York, 13th April, 1858.

U. S. CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

Deposition of Charles Dennis, a witness produced and sworn for the defendants, in each of the above causes, in the presence of D. D. Lord, esquire, counsel for the plaintiff, in each of said causes, deposes as follows: I reside in Brooklyn; I have been an underwriter for seven or eight years, and am now and have been for four years a vice president of the Atlantic Mutual Insurance Company, of the city of New York. In a letter from our correspondent in Baltimore, dated August 11th, 1856, the company received an application for an open policy for Robert C. Wright to cover coffee, &c., by vessel or vessels from Rio Janeiro, Pernambuco, or Bahia, to any Atlantic port or ports in the United States or on Gulf

of Mexico, with a request to endorse on the policy, coffee on ship Gallego from Rio to New Orleans, and coffee by schooner "Mary W." from Rio to a port in the United States.

We received that application on the 12th of August, and the same day replied to the letter of Mr. Cole, stating that we would cover the risk from Rio as per application, with a few alterations to conform to our rules, provided the schooner "Mary W." can be excepted. In that letter we stated that if it were necessary to cover the risk by that vessel, we shall be obliged to decline issuing the policy. In a letter dated August 13, 1856, we enclosed an application made up after our forms and rules for Mr. Wright's signature, in which we provided that the shipment per schooner "Mary W." was excepted. In a letter under date of August 15, 1856, our correspondent at Baltimore returns the application from Mr. Wright, signed by his attorney, commencing with the shipments per ship Gallego, the original papers of which copies are annexed, are produced by the witness on the examination, and there being other *conformation* important to the company, deponent declines to give them up to be annexed hereto.

No risk was taken by the Atlantic Insurance Company by the schooner Mary W. The ground for declining the risk by the schooner Mary W., was the general character of the vessel, being a centre-board vessel, and single deck, and not having a full knowledge of the vessel at the time the risk was offered, she having been out of the reach of our inspection for a length of time. If we had an open policy with the parties under which this risk would have attached, we should probably have felt bound to have taken the risk at a more reasonable rate than if this risk was offered separately. I would not like to say at what rate of premium I would have taken it under these circumstances. I should think ten per cent. was a full premium for the risk, subject to average, and from $\frac{1}{2}$ to $\frac{3}{4}$ per cent. deduction from this free from particular average, by which I mean free from claim for damage, but liable for total loss and general average charges.

Cross-examined by Mr. D. D. Lord, as of counsel for plaintiff.

The usual rate of premium from Rio to New York by good single-deck vessels in the winter season, is from $1\frac{3}{4}$ to 2 per cent. From Rio to New Orleans, or a gulf port, we would a $\frac{1}{4}$ per cent. It often happens that on vessels rating as low in our inspector's book, as A $2\frac{1}{2}$. We do not charge any additional premium on our knowledge of the vessel.

Re-direct examination resumed.

In declining the risk, we were governed by the report of our inspector, and the register of the vessel in our books.

CHARLES DENNIS.

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Sworn to before me, this 13th day of April, 1858.

WILLIAM S. CONSTANT,
Notary Public.

I certify, that on reading over the foregoing deposition to the witness, he desired that the same be qualified as follows, and by the addition of the following words: "In such open policies as I speak of in folio 5, we reserve the right to fix such a rate of premium as in our judgment may seem proper."

WILLIAM S. CONSTANT,
Notary Public.

Exhibits filed with the foregoing deposition.

Schooner "Mary W."

Extract of letter from James C. Coale, of 11th August, 1856, to Atlantic Mutual Insurance Company:

"I enclose an application for $25,000, from Robert C. Wright, to cover coffee, &c., in conformity with which please send policy to cover one-sixth of their interest by vessel or vessels, and endorse thereon $, coffee per ship Gallego from Rio Janeiro to N. O., at 1½ p. c., $, sch. Mary W., do. port in U. S.

Extract from letter of the Atlantic Mutual Ins. Co. to Ja's C. Coale, dated 12th Aug't, '56, in reply to the above:

"We will make a policy for Mr. R. C. Wright to cover risk from Rio, as per application, with a few alterations, to conform to our rules, provided the schooner 'Mary W.' be excepted. If it is necessary to cover the risk by this vessel, we shall be obliged to decline issuing any policy."

Extract from letter of the Atlantic Mutual Ins. Co. to the same, dated 13th August, 1856:

"Referring you to our letter of yesterday's date, we enclose herewith a form, in accordance with which we are willing to issue a policy to Mr. R. C. Wright. If this application is satisfactory, please obtain Mr. Wright's signature, and return it to us."

Extract of letter of Ja's C. Coale to Atlantic Mut. Ins. Co., dated 15 August, 1856:

"Herewith is application from R. C. Wright, signed by his att'y, and in accordance with which please send policy commencing with ship Gallego."

Extract of letter of Atlantic Mut. Ins. Co. to James C. Coale, dated August 16, 1856:

"Enclosed we hand you policy for Mr. R. C. Wright for $25,000, with premium note, for his signature."

Copy.

To the Atlantic Mutual Insurance Co'pany:

Please enter on policy No. , made for Robert C. Wright, on account of whom, &c., $, on coffee, as interest may appear on board the "Mary W.," , master, at and from Rio de Janeiro to a port in the U. S., at rate to be fixed when port is known. Bill of lading dated .

Premium per cent., $. Declined.

Loading last date.

Time of sailing.

Approved. *Pres't.*

Balto., 11 August, 1856.

A 3. May, '48. See book, c. 150, Richmond, N. J., '46.

(61.) Copy.

Insurance is wanted by Robert C. Wright, for account of whom it may concern—to attach when policies with the Sun, Mercantile, New York, and Independent Mutual Ins. Co's are terminated, loss, if any, payable to him—for $25,000, on cargo, to cover one-sixth valued, premium included, at $18 per bag for coffee of each shipment, unless otherwise agreed upon, and endorsed on the policy. Other articles the millrea of invoice to be valued at 65 c. each, premium included in both cases, per vessel or vessels, commencing with shipment per ship Gallego, or by vessels sailing after her, excluding shipment per sc. "Mary W.," and to be insured at and from Rio de Janeiro to ports in the U. S., on the Atlantic coast or Gulf of Mexico, Pernambuco, do. do. Bahia, do. do. Each interest to be considered separately insured; each 200 bags of coffee of separate marks or numbers in order of invoice, subject to average, if damaged, 5 p. c.; each 200 bags, or 100 bbls. sugar in the order of invoice, subject to average, if damaged, seven per cent.; hides subject to average, if damaged, ten per cent.

Captains of vessels to have the privilege of standing their own pilot, if acquainted. This company not to be liable for more than $, per any one vessel at *at* one time, unless otherwise agreed upon at the time of endorsement;

Risks applicable hereto to be reported to this company for endorsement on the policy as soon as known to the assured.

Warrants not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured, nor until

ninety days after notice of said condemnation is given to this company. Also warranted not to abandon in case of blockade, and free from any expense in case of capture, seizure, detention, or blockade; but in the event of blockade, to be at liberty to proceed to an open port, and there end the voyage.

Premium 1½ per cent., with additions and deductions to conform to the rates of the company when the character of the risk, and vessel, and time of sailing are known.

President.

Binding.

(Signed) R. C. WRIGHT, *for applicant.*
Per W. R. JACKSON.

New York, August 12th, 1856.

Deposition of Elwood Walter, witness for the defendants, taken before William S. Constant, notary public, New York.

U. S. CIRCUIT COURT.

JOHN S. WRIGHT
against
THE SUN MUTUAL INSURANCE COMPANY.

JOHN S. WRIGHT
against
THE ORIENT MUTUAL INSURANCE COMPANY.

Elwood Walter, being duly affirmed as a witness on the part of the defendants, in each of the above-entitled causes, and in the presence of Mr. Daniel D. Lord, of counsel for the plaintiff therein, doth depose and say as follows: I reside in the city of Brooklyn; I have been engaged in the business of underwriting for about fifteen years; and have been president of the Mercantile Mutual Insurance Company, of this city, for about six years; and have been secretary of the board of underwriters in this city for about eight years.

(The following testimony is taken subject to the objection of Mr. D. D. Lord, of counsel for the pl'tff.)

In the early part of August, 1856, an application was made for an open policy in the name of R. C. Wright, of Baltimore, to apply to one-sixth of each shipment simultaneously with policies of insurance issued by other insurance companies of this city. It was stated in the application for this open policy that one of the risks to attach under it would be the shipment of coffee by the schooner "Mary W." The company declined issuing the policy as applicable to the shipment by the schooner Mary W., on the ground that she was not calculated to carry a cargo of coffee, and was an inferior

vessel. This was in substance the reason given to the party by whom the application was made. No policy was issued covering the risks by the Mary W. The application is dated Baltimore, the 9th of August, 1856.

The annexed is the original application, with the information annexed as to the risks which would attach under it. An open policy was issued, but excluding the risk by the Mary W. The Atlantic, the Sun, and I think, the Orient, and some other companies were applied to at the same time to issue open policies on the same risk. It is the uniform practice of the insurance companies in this city, and as far as I know elsewhere, to keep register, of the various classes of vessels, in which her name, master, rate, and standing, and other qualities are entered. This practice is generally known to merchants and others who effect insurance. The rate of premium mentioned in the body of an open policy on vessel or vessels, a nominal rate, or as it is sometimes called an average rate, and serves to form the basis of the premium note given for the policy. The practice on these open policies is to depart from this average rate in fixing the amount of premium, and to go below or above, as the nature of the risks, the time of year, &c., require; in a word, to pay no attention to it whatever.

Question. If, instead of declining, you had entertained the risk on the cargo of coffee by the schooner Mary W., from Rio to New Orleans, what would have been a fair rate of premium, either subject to or free from average?

Answer. It is extremely difficult to answer that question. If the risk were presented to me, I should decline to name any rate of premium. I declined so to do at the time it was offered, and should still do so.

The character of the vessel, her model, build, &c., would be important considerations in arriving at this conclusion.

The common understanding in regard to the words "not rating lower than A 2," as applicable to vessels is, that it refers to the rate in the register of the company effecting the insurance.

(The whole of the foregoing was taken subject to objection on the part of Mr. Lord, counsel for plaintiff.)

Cross-examined by Mr. Daniel D. Lord, of counsel for plaintiff.

The application for the open policy contained the information that the risk on two shipments, one of which is by the Mary W., would be expected to attach immediately. The Mary W. was excluded, by informing the parties that the risk by her would not be accepted. There was nothing in the policy itself excluding the Mary W. I made the statement that the risk by the Mary W. would be declined, in writing, and the agent in Baltimore, Mr. Speir, through whom the application was made, replied that he had so informed Mr. R.

C. Wright. I have never seen the Mary W.; I did not refuse her from any personal knowledge of her qualities; I declined her because she was represented—I cannot say with certainity by whom, but I presume by our inspector—to be a flat-bottomed vessel, and had had a centre-board, which had been taken out; I had not, that I know of, insured either her or her cargo before this application. The reasons upon which I refused to insure her were derived entirely from information derived from others.

In these matters, where we find our inspector has not lately seen a vessel, we frequently inquire of the inspectors of other companies who have more recently examined her. The policy which we issued would cover risks lower than A 2. It would have covered shipments by this vessel, provided they had been in accordance with the policy, unless we had notified Mr. Speir that we should exclude that risk. This was my reason for notifying Mr. Spier that we should not consider it as attaching. By saying that it would have attached it in accordance with the policy, I mean, if Mr. R.C. Wright had such an interest as the policy was designed to cover. We have charged ten per cent. premium and more, but I cannot specify any particular case. I think we have within a year. I cannot say in how many cases. I should not be willing to say in more than three cases within a year. These were not cases in which a loss had previously occurred, but where there was a violent presumption of loss.

Re-direct examination, resumed.

When I stated that I declined to name a premium or take the risk, I mean that no rate of premium the party would probably be willing to pay, would have induced me to take it. I should not have been willing to name ten per cent., subject to average, as I should consider that there was more than one chance in ten of a loss occurring, exceeding the amount of the premium.

The danger of these flat-bottomed vessels is chiefly from blowing.

ELWOOD WALTER.

Affirmed before me this 13th day of April, 1858.

WILLIAM S. CONSTANT,
Notary Public.

Exhibits referred to in foregoing deposition.

TO THE MERCANTILE MUT. INS. CO., 52,705.
Of New York:

Insurance is wanted by Rob't C. Wright, for account of whom it may concern, loss, if any, payable to him, on cargo p. vessel or vessels, with or without advice, from Rio de Jan'o, Pernambuco, or Bahia, to any port or ports in the United States, on the Atlantic

or Gulf of Mexico, each 200 bags of coffee of separate mark or number in order of invoice, subject to (5) five per cent. average, each two hundred bags, or one hundred bbls. sugar, subject to seven per cent. average; hides subject to ten per cent. average, and each separate interest subject to separate average.

Coffee, unless otherwise entered, to be val'd at $18 per bag, and other articles at sixty cents for milrees of invoice.

Captains of vessels to and from the capes to have the privilege of standing their own pilots, if acquainted. Average premium to be fixed when the vessel is ascertained; all risks to be reported as soon as known.

Amount wanted on this application, $25,000; and to cover one-sixth of each risk, and the amount estimated as used is to be governed by the principal or value of the article, and not by the premium absorbed.

This policy to attach when my present policies with Sun, Mercantile, New York, and Independent Co's are run out. 1½.

Baltimore, August 9th, 1856. To cover, as interest may appear, ⅙ of bags coffee (32 to 3,500,) per ship Gallego, from Rio to New Orleans, and 1,000 to 2,500 bags p'r schooner Mary W., to a port in the U. States.

The plaintiff then read the deposition of Captain Wolfe, and the exhibits therewith.

Deposition of William Wolfe, witness for the plaintiff, taken before John Hanan, esq'r, U. States Commissioner for Maryland, at the city of Baltimore, on the 28th day of September, 1857.

I am a sea-faring man, and expect to go to sea in ten or twelve days, certainly less than a month; I am commander of the ship Gallego, and expect to go to sea in her during the next fortnight, but don't know now her port of destination. I will sail from Philadelphia, where the ship now is. I have commanded the said ship ever since she was built, which was about 22 months ago. She is owned by Foster, Elliott & Co., of New York.

I have been off and on in the Rio trade since the year 1815; during all that time I have commanded vessels. I have been nearly forty years in the employment of my present owners and their predecessors. I have made in their employment about sixty voyages to Rio, five to Europe, ten to the East Indies, and one to Australia; I have paid particular attention to loading coffee, and have brought more coffee to this country than any man living, as I confidently assert. I am capable of judging of the qualities and conditions of vessels adapted to the transportation of coffee in safety.

There being shown to the deponent the paper writing hereto annexed, marked A, dated 28th June, 1856, he states: That he is

acquainted with the signature of "Robert G. Scott, jr.," subscribed to said paper, and believes the same to be his proper handwriting, and he was at that time the consul of the United States for the port of Rio de Janeiro. I was in Rio on the 28th of June, 1856, and acted as surveyor, at the request of the consul, with Capt. Small, in examining the schooner "Mary W.," whereof Capt. Thomas, of San Fr'isco, was master; at that survey, which was before her cargo was put on board, she was in good condition. I found her in good condition, and in complete order to proceed on any voyage; after she got her cargo on board, and her sails bent, I went aboard of her again, not to make an official report; I saw nothing wrong about her, and found her right strong. She went to sea a day or two after she got her cargo on board, bound, as I understood, for New Orleans. I left a few days afterwards, bound for New Orleans. When she came into Rio, before the 28th of June, I, at the request of the consul, with Capt. Bundey, examined the Mary W., and found she wanted repairs. The witness being asked by plaintiff's counsel in what condition he found her, stated, that he found her requiring certain repairs. The witness then proceeded to state that he reported her condition to the consul; (to which answer the plaintiff's counsel objected,) as a matter not involved in the question propounded.

When I examined her with Capt. Small, I found the repairs had all been done; I did consider her when she left Rio a seaworthy vessel, and do now; I did not see the coffee put on board of her; when I was last on board of her, her hatches were fastened down, and ready for sea, and in good and complete order for any voyage. Upon being asked what he considers she would rank, whether A No. 1 or not, he says he knows nothing about what her rate was, but she was fitted to go to sea, to any part of the world, in his opinion.

Upon being asked if he knows what a vessel rated A No. 2 is, says that he has nothing to do with insurance business, and it is none of his business, and he knows nothing about the rating of vessels.

I did consider her in good condition to carry coffee, or anything you might please to put on board of her for any voyage. She had the American flag and the name on her stern "Mary W., of San Francisco." I, as a shipping master, would have no hesitation in shipping coffee by the said schooner "Mary W." Messrs. Maxwell, Wright & Co., of Rio, consulted me as to the fitness of the Mary W. for shipping of coffee, and I told them I considered her in good order and condition for that or any purpose.

Cross-examined.

The Mary W. originally came from Sydney, round Cape Horn, and whether she touched at Valparaiso or not, I don't know; I

was in Rio, when she arrived there; she was addressed to the house of Maxwell, Wright & Co., and she came in, in distress, with her sails torn.

There was a survey called in regard to her condition, by the consent and at the request of the capt'n; I was on that survey; I believe there was only one survey in regard to her condition; she came in ballast; I made a report of the survey in writing to the consul on the day of the survey; I have not that report, or a copy of it, with me; I do not know if I have one on board of my ship or anywhere else. I cannot altogether state from memory all the repairs she required; I recollect she required a suit of sails; I cannot now state the time of that report; I was consigned to Maxwell, Wright & Co., as I have been for nearly 30 years; I never saw the Mary W. before that time; she was a schooner; I can't state her size or burden; she had been a centre-board schooner with her box blocked up and corked, and I saw that it had been well done.

Re-examined.

I did make a thorough examination on the first survey, of her spars, hull, rigging, and sails, and reported what she needed. Upon being asked whether having been a centre-board schooner, and her box blocked up, and corked, as stated, whether it prevented her being seaworthy, in his opinion, answers, it did not prevent her, as her boxing was as solid as the outside planks.

WM. WOLFE.

Exhibit A, referred to in the foregoing deposition.

By the request of Robert G. Scott, jr., esq., consul of the United States, we, the undersigned, American shipmasters, did appear on board the schooner Mary W., C. Thomas, master, of San Francisco, and have examined her repairs in hull, spars, sails, and rigging, and found the said vessel in complete order to proceed on any voyage.

(Signed) WILLIAM WOLFE,
Master of Ship Gallego, of New York.
ALFRED T. SMALL,
Master of Ship Sounter Johnny.

Rio de Janeiro, June 28th, 1856.

CONSULATE OF THE UNITED STATES,
Rio de Janeiro.

I, the undersigned, consul of the United States, at this city, do hereby certify the above to be a true and correct copy of the original on file at this consulate.

[SEAL.] Given under my hand and seal of office, this 28th day of June, 1856.

ROBERT G. SCOTT, JR.

Evidence of Capt'n Clackner, for the the plaintiff.

The plaintiff then proved, by Capt'n Joseph Clackner, (whose testimony was taken subject to all legal exceptions on the part of the defendant,) that he had been for many years engaged by the insurance companies of Baltimore as inspector of vessels; that he makes weekly reports to the companies; that he reported the Mary W., which was in Baltimore in August, 1848, at that time, to said companies, as follows: "Schooner Mary W., Cathcart, master, built in Bridgeton, N. J.; depth, 8 ft. 6 in,; draft, 9 feet; single, full built; centre-board; rate A 2." He also proved that centre-board schooners very seldom rate higher than A 2.

Cross-examined.

On cross-examination, the same witness stated that he did not know how the Mary W. rated in New York; that he did not rate her A 2 for foreign voyages. Her rate A 2, was for coasting voyages; that he did not consider her good for foreign voyages any way.

Re-examination in chief.

On re-examination, the same witness stated that he placed her on his report as rating A 2 without the above qualification; that the Baltimore agency of the defendant keeps in *in* their office for use and reference his said weekly reports.

Evidence of Capt'n Coale, for plt'ff.

The plaintiff then also proved, (subject to the same exceptions on the part of the defendant,) by Capt'n Coale, that he was a shipmaster in 1835, and has been a marine inspector for four years, and he considers a vessel with her centre-board drawn up and her well closed over as a keel vessel; and that if she has a fourteen-inch keel put on, and as much dead rise as the Mary W., as suitable for carrying coffee as any other vessel.

Cross-examined.

On cross-examination, the same witness stated that he had never carried coffee, and had never seen the Mary W.

It is also proved by the plaintiff, that in August, 1856, prior to the endorsement of the Mary W. on the policy in suit, a policy was taken, by a responsible New York insurance company, on a cargo of coffee from Rio to New Orleans, to be shipped on the Mary W., but interest did not subsequently appear under said policy.

It was then admitted by the defendant, that the plaintiff had furnished the necessary preliminary proof.

Whereupon, the testimony being closed, the plaintiff presented the following prayers:

Plaintiff's prayers.

1. If the jury believe from the evidence that the Mary W., at the time of the shipment of the cargo from Rio Janeiro to New Orleans, as stated, rated and was considered as not under A 2, in the port of Rio aforesaid, then the rate of premium is stipulated on the policy, and the only question for the consideration of the jury is, in respect to her seaworthiness, provided the jury find that said shipment was reported by the assured in said policy as a risk thereto attaching, and that such report was, in fact, made before said loss occurred, and that the same was endorsed on said policy with the privity, and under the authority of said defendant.

2. If the jury believe from the evidence that at the time of the shipment of the cargo on the Mary W. from Rio to New Orleans, the Mary W. did, in fact, rate under A 2, but was seaworthy at the time of the commencement of said voyage, then, upon the whole evidence in this cause, the rating of said vessel under A 2 is in no-wise material, except with reference to the discount of the amount of the additional premium chargeable to the assured from the amount of loss claimed in this case.

And the defendant, the following prayers:

Defendants' prayers.

1. That the jurors in ascertaining from the evidence in this cause, whether the schooner Mary W. was, at the date of the return, made by the plaintiff to the agent of the defendant on the 23d day of August, 1856, rated lower than A 2, are bound to look only to the evidence shewing the rating of said schooner in the office of the defendant, and of other insurance offices in New York, such being the true interpretation of the policy read in evidence by the plaintiff.

2. That there is no evidence offered in this cause to shew that said schooner, Mary W., was rated, on the 23d day of August, 1856, at a rate as high as A 2 in the office of the defendant, or in other insurance offices in New York.

3. If the jury find from the evidence that the schooner Mary W., at the time of the application made by the plaintiff for the endorsement of her cargo upon the policy of insurance offered in evidence in this cause, was rated in the office of the defendant and of other insurance offices in New York at less than A 2, and that being so rated, the said defendant offered to make said endorsement so as aforesaid requested, at the rates of insurance stated in the letter offered in evidence from the defendant to C. Oliver O'Donnell, the agent of said defendant, dated on the 30th day of August, 1856; and shall further find that said offer so to insure upon said rates was communicated to the plaintiff, and that said plaintiff thereupon cammunicated to the defendant the letter offered in evidence of the

3d of September, 1856, then the plaintiff is not entitled to recover in this suit.

But the court rejected all the prayers of the plaintiff and defendant, and granted the following instructions to the jury:

Court's instructions.

If the jury shall find from the evidence that the defendants executed the policy of the 27th of July, 1855, and received from the plaintiff the premium therein mentioned; and that their duly authorized agent in this city made the endorsements on the said policy which have been offered in evidence; and shall further find that 1830 bags of coffee belonging to the plaintiff were shipped on the 12th day of July, 1856, at Rio, on board of the schooner Mary W., to be carried to New Orleans; and that when said schooner left Rio she was seaworthy, and in good condition; and shall further find that the said vessel and cargo were subsequently, on said voyage, totally lost by one of the perils insured against, and that said schooner was rated lower in New York than A 2, then the plaintiff is entitled to recover for one-half the value of said coffee so lost, at $18 per bag, less such additional premium beyond the 1½ per cent. as in the opinion of underwriters may be deemed adequate for the increased risk to a cargo of coffee shipped in a vessel rating below A 2, with interest from thirty days after such time as the jury may find the defendants were furnished by plaintiff with the preliminary proofs of his said loss. (And there is no evidence in this case that the said schooner, at any period during the running of this policy, rated as high as A 2, in any of the insurance offices in New York.)

To which instruction of the court, and to its rejection of the defendants' prayers, and each of them, the defendant excepted, and asks the court to sign and seal this its exceptions, which is accordingly done, this twenty-first day of April, A. D. 1858.

WILLIAM F. GILES, [SEAL.]

And now here, at this day, to wit, the twenty-first day of *of* April, in the year of our Lord one thousand eight hundred and fifty-eight, the said Sun Mutual Insurance Company produced to the said circuit court here the writ of the said United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid of the judgments aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

* * * * *

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fourth circuit in and for the Maryland district, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, between John S. Wright, plaintiff, and the Sun Mutual Insurance Company, defendant, a manifest error hath happened to the great damage of the said Sun Mutual Insurance Company, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable R. B. Taney, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-seven.

THOS. SPICER, *C'k Circuit C't.*

Issued 21 April, 1858.

THE UNITED STATES OF AMERICA.

To John S. Wright, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein the Sun Mutual Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Sun Mutual Insurance Company, in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

[SEAL.] Witness my hand and seal, this 28th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

WILLIAM F. GILES.

Notice of the above citation acknowledged.

R. J. BRENT.

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In pursuance whereof, and acccording to the form and effect of the statute in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmited to the said Supreme Court accordingly.

Writ of Error Bond.

Know all men by these presents, that we, Columbus O'Donnell and C. Oliver O'Donnell, are held and firmly bound unto John S. Wright, in the just and full sum of thirty-five thousand dollars, lawful money of the United States, to be paid to the said John S. Wright, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by the presents. Sealed with our seals, and dated this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-eight, the said John S. Wright, by the judgment of the same court, recovered against the Sun Mutual Insurance Company the sum of seventeen thousand three hundred and sixty-five dollars and thirteen cents, together with his costs and charges in that behalf laid out and expended:

And *and* whereas the said Sun Mutual Insurance Company hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said John S. Wright, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, to shew cause, if any there be, *by* the judgment so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties aforesaid in this behalf:

Now, the condition of the above obligation is such, that if the said Sun Mutual Insurance Company shall well and truly prosecute with effect its said writ of error, and pay to the said John S. Wright, his heirs, executors, administrators, or assigns, the damages, costs, and charges aforesaid adjudged unto him by the said circuit court, and also all such damages, costs, and charges, as may be awarded unto him by the said Supreme Court, in case the said Sun Mutual Insurance Company shall fail to make good its said plea, then the above obligation to be void, and of none effect, otherwise to be and remain in full force and virtue in law.

COLUMBUS O'DONNELL, [SEAL.]
C. OLIVER O'DONNELL, [SEAL.]